

MONTANA LEGISLATIVE HISTORY

Chapter 42 19 97

Bill H _____ S 36

Original bill & history X c

H. Committee on JUDICIARY

Hearing Date(s) 2/4 X c

↳ 4 Exec. Action

_____ c

_____ c

_____ c

Date Out _____ c

S. Committee on JUDICIARY

Hearing Date(s) 1/9 X c

EXEC. ACTION

1/14 X c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes X No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

1/10	FISCAL NOTE PRINTED		
1/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/23	2ND READING PASSED	49	0
1/24	3RD READING PASSED	48	0
TRANSMITTED TO HOUSE			
1/25	FIRST READING		
1/25	REFERRED TO JUDICIARY		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	92	8
4/04	3RD READING CONCURRED	82	17
RETURNED TO SENATE			
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/09	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 255		
	EFFECTIVE DATE: 10/01/97		

INTRODUCED BY HALLIGAN LC0368 DRAFTER: STERNBERG

ALLOW THE ISSUANCE OF A TEMPORARY FAMILY SUPPORT ORDER TO ENSURE THE PAYMENT OF PERIODIC MARITAL ESTATE LIABILITIES OUT OF THE PARTIES' INCOME OR MARITAL ASSETS DURING THE PENDENCY OF MARRIAGE DISSOLUTION PROCEEDINGS

12/19	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/03	REFERRED TO JUDICIARY		
1/06	FIRST READING		
1/09	HEARING		
1/09	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/17	2ND READING PASSED	48	0
1/18	3RD READING PASSED	41	0
TRANSMITTED TO HOUSE			
1/20	FIRST READING		
1/20	REFERRED TO JUDICIARY		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
4/03	2ND READING CONCURRED	72	26
4/04	3RD READING CONCURRED	77	22
RETURNED TO SENATE			
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/09	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 256		
	EFFECTIVE DATE: 10/01/97		

INTRODUCED BY NELSON LC0370 DRAFTER: CAMPBELL

REQUIRE INSURANCE COVERAGE FOR A MINIMUM HOSPITAL STAY FOLLOWING CHILDBIRTH
BY REQUEST OF STATE AUDITOR

12/19	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/03	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/06	FIRST READING		

1/13	HEARING		
1/13	FISCAL NOTE RECEIVED		
1/15	FISCAL NOTE PRINTED		
2/06	TABLED IN COMMITTEE		
2/08	TAKEN FROM COMMITTEE AND PLACED ON 2ND READING ON 31ST DAY	47	0
		48	0
2/10	2ND READING PASSED AS AMENDED	50	0
2/11	3RD READING PASSED		
TRANSMITTED TO HOUSE			
2/12	FIRST READING		
2/12	REFERRED TO BUSINESS & LABOR		
3/14	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED	90	8
3/22	2ND READING CONCURRED	88	11
3/24	3RD READING CONCURRED		
RETURNED TO SENATE			
3/26	SIGNED BY PRESIDENT		
3/27	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 183		
	EFFECTIVE DATE: 01/01/98		

INTRODUCED BY JENKINS LC0535 DRAFTER: PETESCHI

PROVIDE PROCEDURES AND STANDARDS FOR MAKING BUDGET COMPARISONS AND DETERMINING BUDGET PERFORMANCE
BY REQUEST OF LEGISLATIVE FINANCE COMMITTEE

12/19	INTRODUCED		
1/03	REFERRED TO FINANCE & CLAIMS		
1/06	FIRST READING		
1/09	HEARING		
1/13	COMMITTEE REPORT—BILL PASSED AS AMENDED	50	
1/14	2ND READING PASSED	49	
1/15	3RD READING PASSED		
TRANSMITTED TO HOUSE			
1/16	FIRST READING		
1/16	REFERRED TO APPROPRIATIONS		
2/10	HEARING		
2/17	COMMITTEE REPORT—BILL CONCURRED	99	
3/04	2ND READING CONCURRED	100	
3/05	3RD READING CONCURRED		
RETURNED TO SENATE			
3/07	SIGNED BY PRESIDENT		
3/09	SIGNED BY SPEAKER		
3/10	TRANSMITTED TO GOVERNOR		
3/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 74		
	EFFECTIVE DATE: 10/01/97		

INTRODUCED BY LYNCH LC0255 DRAFTER: PETESCHI

REVISE AND CLARIFY THE MONTANA CODE ANNOTATED
BY REQUEST OF CODE COMMISSIONER

12/19	INTRODUCED		
1/03	REFERRED TO JUDICIARY		
1/06	FIRST READING		
1/09	HEARING		

SB 37 HISTORY AND FINAL STATUS 1997 22

1/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/16	2ND READING PASSED	50	0
1/17	3RD READING PASSED	48	0
TRANSMITTED TO HOUSE			
1/18	FIRST READING		
1/18	REFERRED TO JUDICIARY		
2/04	HEARING		
2/06	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	95	4
3/05	3RD READING CONCURRED	94	5
RETURNED TO SENATE			
3/10	SIGNED BY PRESIDENT		
3/10	SIGNED BY SPEAKER		
3/11	TRANSMITTED TO GOVERNOR		
3/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 42		
	EFFECTIVE DATE: 03/12/97—SECTIONS 1-315(1) & 316		
	EFFECTIVE DATE: 07/01/99—SECTION 315(2)		

SB 37 INTRODUCED BY LYNCH, ET AL. LC0280 DRAFTER: MACMASTER

PROHIBIT THE HOUSING OF SEX OFFENDERS IN A FACILITY WITHOUT THE APPROVAL OF THE GOVERNING BODY AND VOTERS OF THE COUNTY IN WHICH THE FACILITY IS PROPOSED OR LOCATED

12/20	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/03	REFERRED TO LOCAL GOVERNMENT		
1/06	FIRST READING		
1/13	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
1/14	HEARING		
1/21	REVISED FISCAL NOTE REQUESTED		
1/25	REVISED FISCAL NOTE RECEIVED		
1/27	REVISED FISCAL NOTE PRINTED		
1/28	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/05	2ND READING PASSED AS AMENDED	36	13
2/06	3RD READING PASSED	39	11
TRANSMITTED TO HOUSE			
2/07	FIRST READING		
2/07	REFERRED TO CORRECTIONS SELECT COMMITTEE		
3/05	HEARING		
3/08	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

SB 38 INTRODUCED BY LYNCH LC0330 DRAFTER: BOHYER

REVISE THE MONTANA LEGISLATIVE INTERN PROGRAM TO ACCOMMODATE THE ACADEMIC YEAR STRUCTURE WITHIN THE MONTANA UNIVERSITY SYSTEM

BY REQUEST OF LEGISLATIVE COUNCIL

12/20	INTRODUCED		
1/03	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/06	FIRST READING		
1/15	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED		
1/17	2ND READING PASSED	48	0
1/18	3RD READING PASSED	41	0
TRANSMITTED TO HOUSE			
1/20	FIRST READING		

23 SENATE BILLS AND RESOLUTIONS SB 40

1/20	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/31	HEARING		
2/03	COMMITTEE REPORT—BILL CONCURRED	100	
3/04	2ND READING CONCURRED	99	
3/05	3RD READING CONCURRED		
RETURNED TO SENATE			
3/10	SIGNED BY PRESIDENT		
3/12	SIGNED BY SPEAKER		
3/14	TRANSMITTED TO GOVERNOR		
3/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 104		
	EFFECTIVE DATE: 10/01/97		

SB 39 INTRODUCED BY NELSON LC0377 DRAFTER: STERNBERG

APPLY MANAGEMENT AND EXCLUSIVE AGENCY CONTRACT RESTRICTIONS TO FARM MUTUAL INSURERS BY REQUEST OF STATE AUDITOR

12/20	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/03	REFERRED TO BUSINESS & INDUSTRY		
1/06	FIRST READING		
1/09	FISCAL NOTE RECEIVED		
1/10	HEARING		
1/11	FISCAL NOTE PRINTED		
1/22	TABLED IN COMMITTEE		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED	50	
2/20	2ND READING PASSED	50	
2/21	3RD READING PASSED		
TRANSMITTED TO HOUSE			
2/22	FIRST READING		
2/22	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/04	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED	96	
3/15	2ND READING CONCURRED	93	
3/17	3RD READING CONCURRED		
RETURNED TO SENATE			
3/19	SIGNED BY PRESIDENT		
3/21	SIGNED BY SPEAKER		
3/21	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 158		
	EFFECTIVE DATE: 10/01/97		

SB 40 INTRODUCED BY GAGE LC0187 DRAFTER: KUR

PROVIDE THAT FOR DEBT COLLECTION PURPOSES, THE TERM "AGENCY" INCLUDES THE INTERNAL REVENUE SERVICE BY REQUEST OF DEPARTMENT OF ADMINISTRATION

12/23	INTRODUCED		
12/30	FISCAL NOTE REQUESTED		
1/03	REFERRED TO STATE ADMINISTRATION		
1/06	FIRST READING		
1/09	HEARING		
1/10	FISCAL NOTE RECEIVED		
1/10	FISCAL NOTE PRINTED		
1/10	COMMITTEE REPORT—BILL PASSED	43	
1/11	2ND READING PASSED	49	
1/13	3RD READING PASSED		

SENATE BILL NO. 36

INTRODUCED BY LYNCH

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CLARIFY ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 55TH LEGISLATURE; AMENDING SECTIONS 1-11-101, 2-1-212, 2-2-121, 2-2-136, 2-4-313, 2-4-622, 2-7-517, 2-8-113, 2-15-2204, 2-18-203, 2-18-301, 2-18-303, 2-18-304, 2-18-704, 2-18-1202, 3-2-405, 5-2-504, 5-4-307, 5-4-308, 5-5-214, 5-5-217, 5-11-203, 5-11-210, 5-11-212, 5-11-213, 5-17-205, 5-18-107, 5-22-101, 7-1-114, 7-2-2218, 7-2-2219, 7-4-2106, 7-4-2206, 7-6-2531, 7-7-4602, 7-13-4311, 7-14-4736, 7-16-2105, 7-16-4222, 7-32-2244, 7-34-2201, 10-2-416, 10-3-207, 10-3-501, 10-3-504, 10-4-101, 10-4-301, 13-13-276, 13-13-278, 13-25-106, 13-27-202, 13-37-106, 13-37-128, 13-37-130, 15-1-521, 15-1-704, 15-7-303, 15-8-104, 15-16-102, 15-16-119, 15-23-101, 15-23-703, 15-23-706, 15-23-707, 15-30-101, 15-30-111, 15-30-117, 15-30-121, 15-30-162, 15-30-201, 15-30-202, 15-31-102, 15-31-131, 15-32-102, 15-32-201, 15-32-403, 15-36-324, 15-36-325, 15-38-104, 15-38-106, 15-38-201, 15-38-202, 15-70-125, 15-70-235, 15-70-236, 16-1-106, 16-1-201, 16-1-202, 16-2-101, 16-2-103, 16-3-220, 16-6-106, 17-2-107, 17-3-221, 17-5-202, 17-6-103, 17-6-212, 17-7-502, 17-8-101, 18-1-103, 19-1-104, 19-1-402, 19-1-503, 19-3-1104, 19-3-1205, 19-9-411, 19-9-1101, 19-20-302, 19-50-102, 20-1-301, 20-7-504, 20-9-115, 20-9-341, 20-9-347, 20-9-466, 20-15-326, 20-15-404, 20-25-501, 22-1-412, 22-3-429, 22-3-603, 23-2-523, 23-2-536, 23-2-622, 23-2-717, 23-2-736, 23-5-406, 23-7-103, 23-7-211, 23-7-301, 25-10-206, 27-1-307, 27-1-718, 30-4-213, 30-10-103, 30-10-110, 32-1-381, 32-1-453, 32-1-1005, 32-3-803, 32-6-102, 33-2-523, 33-2-830, 33-4-511, 33-10-202, 33-16-1026, 33-16-1035, 33-17-603, 33-19-104, 33-22-703, 33-22-1108, 33-22-1521, 33-31-311, 35-1-933, 35-1-934, 35-1-1107, 37-25-305, 37-29-302, 37-29-305, 39-3-406, 39-8-207, 39-29-101, 39-51-307, 39-51-401, 39-51-402, 39-51-403, 39-51-404, 39-51-407, 39-51-501, 39-51-503, 39-51-1110, 39-51-1304, 39-51-2106, 39-51-2110, 39-51-2508, 39-51-2602, 39-51-3106, 39-71-431, 39-71-501, 39-71-517, 39-71-519, 39-71-703, 40-5-161, 40-5-164, 40-5-201, 40-5-701, 40-5-821, 41-1-402, 41-3-204, 41-4-102, 41-5-103, 41-5-1008, 45-2-311, 45-5-624, 45-8-317, 45-9-208, 45-10-108, 46-6-211, 46-14-101, 46-18-130, 46-18-801, 46-20-701, 46-24-212, 46-30-401, 50-4-504, 50-4-605, 50-5-101,

50-5-228, 50-5-1104, 50-31-103, 50-31-202, 50-31-203, 50-31-301, 50-31-306, 50-31-307, 50-31-311,
50-31-312, 50-53-201, 50-53-202, 50-53-203, 50-53-204, 50-53-206, 50-53-207, 50-53-211,
50-53-212, 50-53-216, 50-53-217, 50-53-218, 50-60-101, 52-2-523, 52-5-101, 52-5-108, 52-5-109,
52-5-112, 52-5-113, 53-1-104, 53-1-202, 53-6-110, 53-6-708, 53-7-101, 53-7-301, 53-19-102,
60-2-208, 60-11-121, 61-2-108, 61-3-446, 61-3-463, 61-3-502, 61-4-310, 61-5-121, 61-5-126,
61-8-356, 61-8-407, 61-8-422, 61-8-722, 61-12-201, 69-1-224, 69-12-314, 69-12-406, 72-16-331,
72-16-479, 72-17-213, 75-1-1101, 75-2-101, 75-3-103, 75-5-621, 75-5-1113, 75-6-205, 75-6-211,
75-10-707, 75-10-806, 75-11-313, 75-20-304, 76-2-202, 76-2-222, 76-2-302, 76-3-305, 76-3-511,
76-6-105, 76-14-113, 76-15-541, 76-15-543, 76-15-546, 77-1-804, 77-2-402, 77-2-403, 77-3-444,
77-6-202, 80-7-123, 80-8-111, 81-22-101, 82-4-232, 82-4-253, 82-4-254, 82-4-337, 82-4-360,
85-1-604, 85-2-701, 85-2-905, 85-3-211, 85-5-407, 85-5-408, 85-6-109, 85-7-1910, 85-7-2159,
87-2-803, 87-5-112, 90-2-1104, 90-2-1121, 90-4-1002, 90-6-127, 90-6-210, AND 90-8-301, MCA;
REPEALING SECTIONS 2-18-314, 2-89-201, 2-89-202, 2-89-205, 2-89-206, 2-89-208, 2-89-209, 3-5-516,
13-13-279, 15-6-212, 15-16-802, 15-16-803, 16-2-401, 16-2-402, 16-2-403, 16-2-404, 16-2-405,
16-2-406, 16-2-407, 16-2-408, 20-7-505, 39-7-601, 39-7-602, 39-7-603, 39-7-604, 39-7-605, 39-7-606,
61-1-122, 61-4-309, 70-1-311, 77-1-221, AND 85-2-211, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 1-11-101, MCA, is amended to read:

"1-11-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Code" or "codes" means the Montana Code Annotated, which is a reenactment of the Revised Codes of Montana, 1947, the pocket supplements thereto, and the replacement volumes as provided in 1-11-103.

(2) "Recodify" means to compile, arrange, rearrange, and prepare for publication. It includes, without changing the meaning, effect, or intent of any law:

(a) correcting or changing punctuation, capitalization, spelling, grammatical construction, and numbering as required by uniform literary and bill drafting practice;

(b) substituting the appropriate new code division reference for reference to a section of, to a part of, or to an entire "act";

- (c) substituting calendar date for "effective date", "hereafter", and similar terms;
- (d) creating new titles, chapters, parts, sections, or other divisions of the code;
- (e) changing or inserting language made necessary because of rearrangement;
- (f) eliminating redundant words;
- (g) when given direction or authority by another statute, correcting inaccurate or obsolete references to:
 - (i) titles of officers or agencies, such as those changed by executive reorganization statutes;
 - (ii) other code sections, such as those that have been repealed or repealed and replaced;
 - (h) changing inaccurate terminology to comply with statutory definitions or short form amendments, ~~such as those found in 1-1-202(7);~~
 - (i) changing or creating section captions (catchlines) to clearly reflect the content of the section, unless the section captions are specifically and expressly adopted as part of the law by the legislature."

Section 2. Section 2-1-212, MCA, is amended to read:

"2-1-212. Acceptance of concurrent jurisdiction over veterans center. The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the veterans center, Fort Harrison, Montana, as ceded by Public Law 91-45, ~~83~~ 88 Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana."

Section 3. Section 2-2-121, MCA, is amended to read:

"2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

1 (d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic
2 benefit from any agency;

3 (e) perform an official act directly and substantially affecting to its economic benefit a business or
4 other undertaking in which the officer or employee either has a substantial financial interest or is engaged
5 as counsel, consultant, representative, or agent; or

6 (f) solicit or accept employment, or engage in negotiations or meetings to consider employment,
7 with a person whom the officer or employee regulates in the course of official duties without first giving
8 written notification to the officer's or employee's supervisor and department director.

9 (3) A public officer or public employee may not use public time, facilities, equipment, supplies,
10 personnel, or funds for any campaign activity persuading or affecting a political decision unless the use is:

11 (a) authorized by law; or

12 (b) properly incidental to another activity required or authorized by law, such as the function of an
13 elected public official, the official's staff, or the legislative staff in the normal course of duties.

14 (4) A state employee may not participate in a proceeding when an organization of which the
15 employee is an officer or director is:

16 (a) involved in a proceeding before the employing state agency that is within the scope of the
17 employee's job duties; or

18 (b) attempting to influence a local, state, or federal proceeding in which the employee represents
19 the state.

20 (5) A state officer or state employee may not engage in any activity, including lobbying, as defined
21 in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the
22 officer's or employee's job duties. The provisions of this subsection do not prohibit an officer or employee
23 from performing charitable fundraising activities if approved by the employee's supervisor or authorized by
24 law.

25 (6) A department head or a member of a quasi-judicial or rulemaking board may perform an official
26 act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration
27 of a statute and if the person complies with the disclosure procedures under 2-2-131.

28 (7) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee
29 unless the member is also a full-time public employee.

30 (8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon

conviction shall be punished by a fine of not less than \$50 or more than \$1,000, by imprisonment in the county jail for not more than 6 months, or by both. A civil proceeding under 2-2-136 or 2-2-144 does not preclude an action under this subsection."

Section 4. Section 2-2-136, MCA, is amended to read:

"2-2-136. Enforcement for state officers, legislators, and state employees. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner shall request any information necessary to make a determination from the complainant or the person who is the subject of the complaint and may issue subpoenas.

(b) Unless the complaint is referred to the county attorney under subsection (1)(c), the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

(2) If the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000, and if the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) The decision of the commissioner may be appealed to the ethics commission as provided in 2-2-137.

(4) Except for records made public in the course of a hearing, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are not open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

1 **Section 5.** Section 2-4-313, MCA, is amended to read:

2 **"2-4-313. Distribution, costs, and maintenance.** (1) The secretary of state shall distribute copies
3 of ARM and supplements or revisions to ARM to the following:

4 (a) attorney general, one copy;

5 (b) clerk of United States district court for the district of Montana, one copy;

6 (c) clerk of United States court of appeals for the ninth circuit, one copy;

7 (d) county commissioners or governing body of each county of this state, for use of county officials
8 and the public, at least one but not more than two copies, which may be maintained in a public library in
9 the county seat or in the county offices as the county commissioners or governing body of the county may
10 determine;

11 (e) state law library, one copy;

12 (f) state historical society, one copy;

13 (g) each unit of the Montana university system, one copy;

14 (h) law library of the university of Montana-Missoula, one copy;

15 (i) legislative ~~council~~ services division, two copies;

16 (j) library of congress, one copy;

17 (k) state library, one copy.

18 (2) The secretary of state, each county in the state, and the librarians for the state law library and
19 the university of Montana-Missoula law library shall maintain a complete, current set of ARM, including
20 supplements or revisions to ARM. The designated persons shall also maintain the register issues published
21 during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers.

22 (3) The secretary of state shall make copies of and subscriptions to ARM and supplements or
23 revisions to ARM and the register available to any person at prices fixed in accordance with subsection (4).

24 (4) The secretary of state, in consultation with the administrative code committee, shall determine
25 the cost of supplying copies of ARM and supplements or revisions to ARM and the register to persons not
26 listed in subsection (1). The cost must be the approximate cost of publication of the copies, including
27 indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may
28 be established without regard to differences in cost of printing different parts of ARM and supplements or
29 revisions to ARM and the register. Fees are not refundable.

30 (5) The secretary of state shall deposit all fees in a proprietary fund.

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. The secretary of state shall fix, in consultation with the administrative code committee, the fee to cover the costs of supplying copies of ARM and supplements or revisions to ARM and the register to the persons listed in subsection (1). The cost must be the approximate cost of publication of the copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions to ARM and the register."

Section 6. Section 2-4-622, MCA, is amended to read:

"2-4-622. When hearings officer unavailable for decision. (1) If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties.

(2) The parties may waive compliance with 2-4-621 and ~~2-4-622~~ this section by written stipulation."

Section 7. Section 2-7-517, MCA, is amended to read:

"2-7-517. Penalty. (1) When a local government entity has failed to file a report as required by 2-7-503(1), unless an extension has been granted by the department for good cause shown, or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) When a local government entity has failed to make payment as required by 2-7-516(1) within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity."

Section 8. Section 2-8-113, MCA, is amended to read:

"2-8-113. Hearings by standing committee -- criteria for termination. (1) Prior to termination of an agency or program, the appropriate standing committee in each house of the legislature or a joint

committee of both houses composed of members of the standing committee assigned to conduct the hearing shall hold a public hearing, receiving testimony from the public and the head of the department to which the agency or program involved is attached, the head of the agency involved, and persons who conducted the review.

(2) In the event termination of an agency or program is recommended by the legislative audit committee, the agency involved in the termination has the burden of demonstrating a public need for the agency's or program's continued existence and the extent to which a change in the composition, structure, and operation of the agency or program would improve public health, safety, or welfare.

(3) In determining whether to reestablish an agency or program, the legislature shall consider the performance audit and review conducted by the legislative audit committee, ~~the public testimony responsive to the questions set forth in subsection (2) of 2-8-112,~~ and other matters considered relevant by the committee."

Section 9. Section 2-15-2204, MCA, is amended to read:

"2-15-2204. Developmental disabilities planning and advisory council. (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of at least 23 but no more than 25 members and consists of the following:

(a) a representative of the program of services provided under the authority of the Rehabilitation Act of 1973, 29 U.S.C. 701, et seq.;

(b) a representative of the program of services provided under the authority of the Older Americans Act of 1965, 42 U.S.C. 3001, et seq.;

(c) a representative of the program of services for persons with developmental disabilities provided under the authority of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.;

(d) a representative of the program of services provided under the authority of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.;

(e) two recognized professionals, one each in the disciplines of medicine and law;

(f) one member of the state senate;

(g) one member of the state house of representatives;

1 (h) seven persons, each of whom has a developmental disability or who is an immediate family
2 member or guardian of a person with a developmental disability;

3 (i) one member of each of the five regional councils provided for in 53-20-207, each of whom has
4 a developmental disability or who is an immediate family member or guardian of a person with a
5 developmental disability;

6 (j) the director of the university-affiliated or satellite program on developmental disabilities, created
7 pursuant to 42 U.S.C. ~~6034~~ 6061, or a designee of the director;

8 (k) the director of the state protection and advocacy system, created pursuant to 42 U.S.C. ~~6012~~
9 6041, or a designee of the director; and

10 (l) a representative of a statewide developmental disabilities service provider organization whose
11 member agencies provide direct services to persons with developmental disabilities.

12 (3) (a) Each member who serves on the council pursuant to subsection (2)(a), (2)(b), (2)(c), or
13 (2)(d) shall serve for a term concurrent with the respective term of the director of the agency that
14 administers the program that the member represents. Upon the removal of an agency director from office,
15 the representative's term as a member of the council is automatically terminated.

16 (b) Each member who serves on the council pursuant to subsection (2)(f) or (2)(g) must be
17 appointed or reappointed annually by the governor.

18 (c) Eight of the members serving on the council pursuant to subsection (2)(e), (2)(h), (2)(i), (2)(l),
19 or (3)(d) must be appointed by the governor to serve for terms concurrent with the gubernatorial term and
20 until their successors are appointed. The remaining members serving on the council pursuant to subsection
21 (2)(e), (2)(h), (2)(i), (2)(l), or (3)(d) must be appointed by the governor to serve for terms ending on January
22 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

23 (d) Representatives named to the council pursuant to this section, in addition to fulfilling the
24 requirements listed in subsections (2)(a) through (2)(l), may also be selected to represent the following
25 areas: psychology, social work, special education, and minority groups, including Native Americans with
26 developmental disabilities. A minimum of one member of the council must represent each of these areas.
27 In the event that the persons listed in subsections (2)(a) through (2)(l) do not represent all of the areas of
28 psychology, social work, special education, and minority groups, including Native Americans with
29 developmental disabilities, up to two representatives may be added to the membership of the council to
30 represent not more than two of these groups.

(4) The council is allocated to the department for administrative purposes only and, unless inconsistent with the provisions of 53-20-206 and this section, the provisions of 2-15-121 apply."

Section 10. Section 2-18-203, MCA, is amended to read:

"2-18-203. Review of positions -- change in classification. (1) The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities. In the event that adjustments are to be made to class specifications, class series benchmarks, or criteria used for allocating positions to classes affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for blue-collar, and teachers', ~~and liquor store clerks'~~ classification plans, which plans must remain mandatory negotiable items under Title 39, chapter 31.

(2) Employees and employee organizations must be given the opportunity to appeal the allocation or reallocation of a position to a class. The grade assigned to a class and factors assigned to class series benchmarks are not appealable subjects under 2-18-1011 through 2-18-1013.

(3) The period of time for which retroactive pay for a classification appeal may be awarded under 2-18-1011 through 2-18-1013 or under parts 1 through 3 of this chapter may not extend beyond 30 days prior to the date on which the appeal was filed."

Section 11. Section 2-18-301, MCA, is amended to read:

"2-18-301. Purpose and intent of part -- rules. (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 and excluding employees compensated under 2-18-313 ~~through~~ and 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, pay adjustments and pay schedules provided for in 2-18-303 and in 2-18-312, 2-18-313, and ~~through~~ 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the 54th legislature.

(4) Pay levels provided for in 2-18-312, 2-18-313, and through 2-18-315 may not be increased through collective bargaining after adjournment of the 54th legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312, 2-18-313, and through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the 54th legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

Section 12. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for using pay schedules. (1) The pay schedules provided in 2-18-312 must be implemented as follows:

(a) The pay schedules provided in 2-18-312 indicate the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (7) and (8).

~~(c) On the first day of the first complete pay period in fiscal year 1996, each employee hired before July 1, 1995, is entitled to the amount of the employee's base salary as it was on June 30, 1995, plus, on the employee's anniversary date that occurs on or after September 30, 1995, the increases provided in subsection (1)(d), if applicable.~~

~~(d)(c)~~ (i) Effective on the first day of the pay period that includes an employee's anniversary date during the fiscal ~~years year~~ ending ~~June 30, 1996, and~~ June 30, 1997, an employee's market ratio must be compared to the target market ratio in the matrix in subsection ~~(1)(d)(iii)~~ (1)(c)(ii) that corresponds to the employee's grade level and completed years of uninterrupted state service. For employees hired on or before September 30, 1994, the anniversary date is October 1.

(ii) As provided in subsection ~~(1)(d)(i)~~ (1)(c)(i), the following matrix must be used to compare an employee's market ratio to the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service:

TARGET MARKET RATIOS

1	Grade	Years										
		0	1	2	3	4	5	6	7	8	9	10
3	4	0.844	0.874	0.904	0.935	0.967	0.999	1.000	1.000	1.000	1.000	1.000
4	5	0.842	0.871	0.900	0.930	0.961	0.992	1.000	1.000	1.000	1.000	1.000
5	6	0.840	0.868	0.896	0.925	0.955	0.985	1.000	1.000	1.000	1.000	1.000
6	7	0.838	0.865	0.892	0.920	0.949	0.978	1.000	1.000	1.000	1.000	1.000
7	8	0.836	0.862	0.889	0.916	0.944	0.972	1.000	1.000	1.000	1.000	1.000
8	9	0.834	0.859	0.885	0.911	0.938	0.965	0.993	1.000	1.000	1.000	1.000
9	10	0.832	0.857	0.882	0.908	0.934	0.961	0.988	1.000	1.000	1.000	1.000
10	11	0.830	0.854	0.878	0.903	0.928	0.954	0.980	1.000	1.000	1.000	1.000
11	12	0.828	0.851	0.875	0.899	0.924	0.949	0.975	1.000	1.000	1.000	1.000
12	13	0.826	0.849	0.872	0.896	0.920	0.945	0.970	0.996	1.000	1.000	1.000
13	14	0.824	0.846	0.869	0.892	0.915	0.939	0.963	0.988	1.000	1.000	1.000
14	15	0.822	0.844	0.866	0.888	0.911	0.934	0.958	0.982	1.000	1.000	1.000
15	16	0.820	0.841	0.863	0.885	0.907	0.930	0.953	0.977	1.000	1.000	1.000
16	17	0.818	0.839	0.860	0.882	0.904	0.926	0.949	0.972	0.996	1.000	1.000
17	18	0.816	0.836	0.857	0.878	0.899	0.921	0.943	0.966	0.989	1.000	1.000
18	19	0.814	0.834	0.854	0.875	0.896	0.917	0.939	0.961	0.984	1.000	1.000
19	20	0.812	0.831	0.851	0.871	0.892	0.913	0.935	0.957	0.979	1.000	1.000
20	21	0.810	0.829	0.849	0.869	0.889	0.910	0.931	0.953	0.975	0.997	1.000
21	22	0.808	0.827	0.846	0.866	0.886	0.906	0.927	0.948	0.970	0.992	1.000
22	23	0.806	0.825	0.844	0.863	0.883	0.903	0.923	0.944	0.965	0.987	1.000
23	24	0.804	0.822	0.841	0.860	0.879	0.899	0.919	0.940	0.961	0.982	1.000
24	25	0.802	0.820	0.838	0.857	0.876	0.895	0.915	0.935	0.956	0.977	0.999

~~(iii) If, on the first day of the pay period that includes an employee's anniversary date during the fiscal year ending June 30, 1996, the employee's market ratio is less than the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service, the employee's base salary must be increased to the lesser of:~~

~~(A) the market salary for the employee's grade multiplied by the target ratio that corresponds to the employee's grade level and completed years of uninterrupted state service; or~~

~~(B) the employee's base salary as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1995, plus 5%.~~

~~(iv)(iii)~~ If, on the first day of the pay period that includes an employee's anniversary date during the fiscal year ending June 30, 1997, the employee's market ratio is less than the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service, the employee's base salary must be increased to the lesser of:

(A) the market salary for the employee's grade multiplied by the target ratio that corresponds to the employee's grade level and completed years of uninterrupted state service; or

(B) the employee's base salary as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1996, plus 6%.

~~(e)(d)~~ An employee's base salary may be no less than the entry salary for the employee's assigned grade.

~~(f)(e)~~ An employee's base salary may not exceed the maximum salary for the employee's grade. The salary of an employee may not be reduced because of this provision.

~~(g)(f)~~ The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

~~(h)(g)~~ An employee's market ratio, as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1996, may not be reduced as a result of the adjustment of the pay ranges provided in 2-18-312(2).

(2) The pay schedules provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers, ~~liquor store occupations,~~ or blue-collar occupations compensated under the pay schedules provided in 2-18-313 ~~through and~~ 2-18-315.

(3) The pay schedules provided in 2-18-313 ~~through and~~ 2-18-315 must be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years ~~1996 and year~~ 1997.

~~(iii) The compensation of each teacher on July 1, 1995, is the same as it was on June 30, 1995.~~

~~(iii)(ii)~~ On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed under the authority of the department of public health and human services prior to October 1,

1994, shall advance one step on the appropriate pay schedule adopted in 2-18-313. A teacher hired after October 1, 1994, shall advance on the teacher's actual anniversary date.

~~(iv)(iii)~~ On the first day of the first full pay period during the month that includes the teacher's anniversary date, a teacher employed under the authority of the department of corrections shall advance one step on the appropriate pay schedule adopted in 2-18-313.

~~(iv)(iv)~~ On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed by the Montana school for the deaf and blind shall advance one step on the teacher pay matrix used by the school.

~~(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, 1996, and June 30, 1997, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.~~

~~(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1996 or 1997 is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.~~

~~(b) (i)~~ (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 1996, and June 30, 1997, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year ~~1996~~ or 1997 is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) A member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement covering the biennium ending June 30, 1997.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, 1995, retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, 1995, members of the bargaining unit must continue to receive the compensation that they were receiving as of June 30, 1995, until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, 2-18-313, ~~through~~ 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and through 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. ~~Insofar as To the extent that~~ the program ~~may apply~~ applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

(8) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. ~~Insofar as To the extent that~~ these adjustments ~~may~~ apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

Section 13. Section 2-18-304, MCA, is amended to read:

"2-18-304. Longevity allowance. (1) (a) ~~(i) Effective July 1, 1995, through the last day of the pay period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.~~

~~(ii)~~ Effective on the first day of the pay period that includes October 1, 1995, in addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, ~~2-18-314,~~ or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee's date of employment; an employee must be

1 credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or
2 on an authorized leave of absence without pay, regardless of the number of hours of service in the pay
3 period; or

4 (ii) 12 uninterrupted calendar months following the employee's date of employment in which the
5 employee was in a pay status or on an authorized leave of absence without pay, regardless of the number
6 of hours of service in any month. An employee of a school at a state institution or the university system
7 must be credited with 1 year of service if the employee is employed for an entire academic year.

8 (b) State agencies, other than the university system and a school at a state institution, shall use
9 the method provided in subsection (2)(a)(i) to calculate years of service under this section."

10
11 **Section 14.** Section 2-18-704, MCA, is amended to read:

12 **"2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must
13 contain provisions that permit:

14 (a) the member of a group who retires from active service under the appropriate retirement
15 provisions provided by law to remain a member of the group until the member becomes eligible for medicare
16 under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is
17 a participant in another group plan with substantially the same or greater benefits at an equivalent cost or
18 unless the member is employed and, by virtue of that employment, is eligible to participate in another group
19 plan with substantially the same or greater benefits at an equivalent cost;

20 (b) the surviving spouse of a member to remain a member of the group as long as the spouse is
21 eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is
22 eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is
23 eligible for equivalent insurance coverage as provided in subsection (1)(a);

24 (c) the surviving children of a member to remain members of the group as long as they are eligible
25 for retirement benefits accrued by the deceased member as provided by law unless they have equivalent
26 coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment
27 of a surviving parent or legal guardian.

28 (2) An insurance contract or plan issued under this part must contain the provisions of subsection
29 (1) for remaining a member of the group and also must permit:

30 (a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

1 (b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

2 (c) continued membership in the group by anyone eligible under the provisions of this section,
3 notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

4 (3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain
5 a member of the state's group plan until the legislator becomes eligible for medicare under the federal
6 Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

7 (i) terminates service in the legislature and is a vested member of a state retirement system
8 provided by law; and

9 (ii) notifies the department of administration in writing within 90 days of the end of the legislator's
10 legislative term.

11 (b) A former legislator may not remain a member of the group plan under the provisions of
12 subsection (3)(a) if the person:

13 (i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

14 (ii) is employed and, by virtue of that employment, is eligible to participate in another group plan
15 with substantially the same or greater benefits at an equivalent cost.

16 (c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and
17 subsequently terminates membership may not rejoin the group unless the person again serves as a
18 legislator.

19 (4) A person electing to remain a member of the group under subsection (1), (2), or (3) shall pay
20 the full premium for coverage and for that of the person's covered dependents.

21 (5) An insurance contract or plan issued under this part that provides for the dispensing of
22 prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

23 (a) must permit any member of a group to obtain prescription drugs from a pharmacy located in
24 Montana that is willing to match the price charged to the group or plan and to meet all terms and
25 conditions, including the same professional requirements that are met by the mail service pharmacy for a
26 drug, without financial penalty to the member; and

27 (b) may only be with an out-of-state mail service pharmacy that is registered with the board under
28 Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation."

29
30 **Section 15.** Section 2-18-1202, MCA, is amended to read:

1 **"2-18-1202. Definitions.** As used in this part, the following definitions apply:

2 (1) "Agency" has the meaning provided in 2-18-101 but does not include the Montana university
3 system.

4 (2) "Employee" means a person employed by the state who has achieved permanent status, as
5 defined in 2-18-101, or officers and employees of the legislative branch and teachers under the authority
6 of the department of corrections or department of public health and human services who have been
7 employed for at least 6 continuous months ~~and who have waived benefits under the provisions of 2-18-319~~
8 ~~and 2-18-320.~~

9 (3) "Privatization" means contracting with the private sector to provide a service normally or
10 traditionally provided directly by an employee of an agency."

11
12 **Section 16.** Section 3-2-405, MCA, is amended to read:

13 **"3-2-405. Settlements and accounts to state auditor treasurer.** (1) The clerk is responsible for and
14 ~~must shall~~ account ~~for and, in his settlement with~~ to the state auditor, treasurer for ~~must be charged with~~
15 the full amount of all fees collected or chargeable and accruing in causes brought into the court for services
16 rendered ~~therein in the court~~ up to the time of each settlement. The settlement must take place quarterly,
17 and immediately ~~thereafter~~ after the settlement, the clerk ~~must shall~~ pay the amount found due into the
18 treasury or to the public employees' retirement division, as provided in 3-2-404.

19 (2) ~~He must also at~~ At the end of each quarter the clerk shall render to the state auditor treasurer,
20 in ~~such the~~ form as that officer prescribes, an account in detail and under oath of all fees chargeable and
21 accruing in causes brought into court and not included in ~~his~~ the clerk's previous accounts.

22 (3) ~~His~~ The clerk's salary may not be ~~allowed or~~ paid until all fees ~~so accruing~~ for which ~~he~~ the
23 clerk is chargeable have been accounted for and paid ~~over~~."

24
25 **Section 17.** Section 5-2-504, MCA, is amended to read:

26 **"5-2-504. Legislative branch consolidated.** The following legislative branch entities are
27 consolidated ~~with the legislative council~~, as provided in 5-2-503 and this section, with the legislative council
28 established by 5-11-101:

29 (1) the senate and the house of representatives provided for in Article V, section 1, of the Montana
30 constitution;

- ~~(2) the legislative council established by 5-11-101;~~
~~(3)(2) the legislative services division established by 5-11-111;~~
~~(4)(3) the legislative finance committee established by 5-12-201;~~
~~(5)(4) the legislative fiscal division established by 5-12-301;~~
~~(6)(5) the legislative audit committee established by 5-13-201;~~
~~(7)(6) the legislative audit division established by 5-13-301;~~
~~(8)(7) the administrative code committee established by Title 5, chapter 14, part 1;~~
~~(9)(8) the environmental quality council established by 5-16-101;~~
~~(10)(9) the revenue oversight committee established by 5-18-102; and~~
~~(11)(10) the committee on Indian affairs established by 5-19-102."~~

Section 18. Section 5-4-307, MCA, is amended to read:

"5-4-307. Bills remaining with the governor. (1) A bill ~~which that~~ has passed both houses of the legislature and has not been returned by the governor within ~~5 days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned~~ 10 days after its delivery to the governor becomes law.

(2) The governor shall deliver the bill to the secretary of state and direct ~~him~~ the secretary of state to authenticate it by a certificate endorsed on or attached ~~thereon~~ to the bill. The form of the certificate ~~shall~~ must be: "This bill having remained with the governor ~~5 10~~ days, ~~and the legislature being in session,~~ it has become a law this day of,", or "This bill having remained with the governor ~~25~~ days, ~~and the legislature being adjourned, it has become a law this day of,~~". The certificate ~~shall~~ must be signed by the secretary of state and deposited with the laws in ~~his~~ the secretary of state's office."

Section 19. Section 5-4-308, MCA, is amended to read:

"5-4-308. Transmittal of veto messages to legislative ~~council~~ services division. The governor shall transmit one copy of each veto message to the legislative ~~council~~ services division."

Section 20. Section 5-5-214, MCA, is amended to read:

"5-5-214. Interim activity. The subcommittees may perform their functions when the legislature is not in session. The personnel, data, and facilities of the legislative ~~council~~ services division ~~shall~~ must

1 be made available to ~~each~~ the subcommittees."

2
3 **Section 21.** Section 5-5-217, MCA, is amended to read:

4 "5-5-217. **Selection and assignment of interim studies.** (1) Immediately following adjournment sine
5 die, the legislative ~~council~~ services division shall prepare a list of study requests adopted. A copy of the list
6 ~~shall~~ must be distributed to each legislator with a request that the legislator rank the study requests in the
7 order of importance ~~to~~ that the legislator ascribes to them. The lists, with the priorities assigned, ~~shall~~ must
8 be returned to the legislative ~~council~~ services division.

9 (2) The legislative council shall review the priority lists returned by legislators, review estimated
10 costs and staff assistance associated with the requested studies, and designate those studies to be
11 assigned. In designating studies, the legislative council may combine requests as one study when the
12 subject matter of those requests is closely related. The legislative council shall group related studies
13 together and shall designate the number of subcommittees to be assigned studies.

14 (3) The legislative ~~council~~ services division shall inform the committee on committees and speaker
15 of the house of those studies that have been selected and to which joint subcommittee each study has
16 been assigned. The committee on committees and speaker shall then proceed under 5-5-211 to appoint the
17 subcommittees."

18
19 **Section 22.** Section 5-11-203, MCA, is amended to read:

20 "5-11-203. **Distribution of session laws -- inspection of journals.** (1) Immediately after the session
21 laws are published, the legislative services division shall distribute them.

22 (2) The legislative services division shall make the house and senate journals available for
23 inspection or copying by the public as provided in Title 2, chapter 6, part 1. The legislative services division
24 may publish the journals in an electronic format.

25 (3) The following entities may receive the number of copies of session laws listed at no cost:

26 (a) to the library of congress, eight copies;

27 (b) to the state library, two copies;

28 (c) to the state historical library, two copies;

29 (d) to the state law librarian, four copies for the use of the library and additional copies as may be
30 required for exchange with libraries and institutions maintained by other states and territories and public

libraries;

(e) to the library of each custodial institution, one copy;

(f) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102(9), one copy;

(g) to any agency, board, commission, or office of the state, other than a state officer, and to any other subdivision of the state upon request and approval by the legislative council, one copy;

(h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the laws were adopted, one copy;

(i) to each of the community college districts of the state, as defined in 20-15-101, and each unit of the Montana university system, one copy;

(j) to each county clerk, one copy for the use of the county; and

(k) to each county attorney and to each clerk of a district court, one copy."

Section 23. Section 5-11-210, MCA, is amended to read:

"5-11-210. Clearinghouse for reports to legislature. (1) For the purposes of this section, "report" means a report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the executive director of the legislative council services division:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed 100 words;

(c) a recommendation on how many copies of the report should be provided to the legislature;

(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies; and

(e) an estimated cost for each copy of the report.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the legislative council or the executive director shall, in writing, direct the reporting entity to provide a specific number of copies. The number of copies required is at the sole discretion of the legislative council. The legislative council or the executive

1 director may require the reporting entity to mail the copies of the report.

2 (4) The legislative council may require that the report be submitted in an electronic format usable
3 on the legislature's current computer hardware, in a microform, such as microfilm or microfiche, or in a
4 CD-ROM format, meaning compact disc read-only memory.

5 (5) Costs of preparing and distributing a report to the legislature, including writing, printing,
6 postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the
7 requirements of this section may not accrue to the legislative ~~council~~ services division.

8 (6) The executive director of the legislative ~~council~~ services division shall cause to be prepared a
9 list of all reports required to be presented to the legislature from the list of titles received under subsection
10 (2).

11 (7) The executive director shall, as soon as possible following a general election, mail to each
12 holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the
13 abstracts prepared pursuant to subsection (2)(b). The list must include a form on which each member or
14 member-elect receiving the list may indicate the report or reports that the member or member-elect would
15 like to receive.

16 (8) The executive director of the legislative ~~council~~ services division shall make copies of reports
17 requested pursuant to subsection (7) available to those members or members-elect by either requiring that
18 copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of
19 the legislative session.

20 (9) The executive director of the legislative ~~council~~ services division may keep as many copies of
21 a report as are necessary and discard the rest.

22 (10) The procedure outlined in this section may also be used for a report required to be made to
23 the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety
24 Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in
25 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201."

26
27 **Section 24.** Section 5-11-212, MCA, is amended to read:

28 **"5-11-212. Fees for proceedings.** (1) A complete set of the proceedings of a regular or special
29 session of the legislature may be purchased from the legislative ~~council~~ services division for the amount
30 prescribed by the legislative council. Upon receipt of payment, the executive director of the ~~council~~

1 legislative services division shall supply the purchaser with a complete set of the proceedings.

2 (2) A purchaser who requests that a set of the proceedings be mailed shall pay an additional fee
3 as prescribed by the council for each complete set that is mailed.

4 (3) Single copies of bills, resolutions, or amendments ~~thereto~~ to bills or resolutions may be
5 purchased from the legislative ~~council~~ services division for a price varying with the length of the document
6 as prescribed by the legislative council.

7 (4) Single copies of status sheets or status of proceedings may be purchased from the legislative
8 ~~council~~ services division for a price per copy as prescribed by the legislative council. A person may
9 subscribe to receive daily copies of the status sheets or status of proceedings by mail for a fee set by the
10 legislative council to cover the costs of the service.

11 (5) The executive director of the legislative ~~council~~ services division shall account for all funds
12 collected under this section and shall transmit the funds to the treasurer of the state of Montana, who shall
13 credit them to the general fund."

14
15 **Section 25.** Section 5-11-213, MCA, is amended to read:

16 **"5-11-213. Exclusions.** Each general circulation newspaper published in Montana and each radio
17 or television station broadcasting in Montana that has registered with the executive director of the
18 legislative ~~council~~ services division is exempt from 5-11-212 and shall receive one complete set of the
19 ~~legislative~~ proceedings of the legislature for the ensuing biennium without charge."

20
21 **Section 26.** Section 5-17-205, MCA, is amended to read:

22 **"5-17-205. Commission activities -- authority.** The commission may:

23 (1) raise money from the private sector for the ongoing historical restoration and preservation of
24 the capitol; and

25 (2) suggest capitol improvements, except changes in the location of the Montana senate chambers;

26 and

27 ~~(3) plan for the capitol centennial event."~~

28
29 **Section 27.** Section 5-18-107, MCA, is amended to read:

30 **"5-18-107. Powers and duties of committee -- duty to review revenue rules -- legislative oversight**

1 of department of revenue -- committee reports -- revenue estimating and use of estimates -- coal tax
2 oversight. (1) The committee shall review all proposed rules of the department of revenue filed with the
3 secretary of state.

4 (2) The committee may:

5 (a) request and obtain the department's rulemaking records for the purpose of reviewing
6 compliance with 2-4-305;

7 (b) prepare written recommendations for the adoption, amendment, or rejection of a rule and
8 submit the recommendations to the department;

9 (c) submit oral or written testimony at a rulemaking hearing;

10 (d) require the department to appear before the committee and respond to the committee's
11 recommendations for the adoption, amendment, or rejection of a rule;

12 (e) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through
13 2-4-305;

14 (f) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in
15 2-4-412;

16 (g) institute, intervene in, or otherwise participate in proceedings involving the legality of a rule
17 under the Montana Administrative Procedure Act in the state and federal courts and administrative
18 agencies;

19 (h) review the incidence and conduct of the department's administrative proceedings;

20 (i) require the department to publish the full or partial text of any pertinent material adopted by
21 reference under 2-4-307;

22 (j) by an affirmative vote of at least six members of the committee, contract for the preparation
23 of an economic impact statement or require the department to prepare an economic impact statement,
24 following the provisions of 2-4-405;

25 (k) petition the department to promulgate, amend, or repeal a rule. Within 60 days after submission
26 of a petition, the department shall either deny the petition in writing, stating its reasons for the denial, or
27 shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

28 (l) make written objection to a proposed rule of the department for lack of substantial compliance
29 with 2-4-302 through 2-4-305. The provisions of 2-4-406 govern the objection procedure, the department's
30 response, and the procedure for and effect of publication of the objection in the Montana Administrative

1 manner as provided by section 995 of the Internal Revenue Code (26 U.S.C. 995) for all periods for which
2 the DISC election is effective.

3 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's
4 business deductions by an amount for wages and salaries for which a federal tax credit was elected under
5 ~~section 44B~~ sections 38 and 51(a) of the Internal Revenue Code of 1954, as ~~that section~~ those sections
6 may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of
7 the credit taken. The deduction must be made in the year the wages and salaries were used to compute
8 the credit. In the case of a partnership or small business corporation, the deduction must be made to
9 determine the amount of income or loss of the partnership or small business corporation.

10 (5) Married taxpayers filing a joint federal return who are required to include part of their social
11 security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split
12 the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1
13 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be
14 split equally on the Montana return.

15 (6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of
16 the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross
17 income up to \$100 per week received as wages or payments in lieu of wages for a period during which the
18 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and
19 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the
20 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's
21 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
22 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined
23 adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable
24 to engage in any substantial gainful activity by reason of any medically determined physical or mental
25 impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of
26 contingency--sec. 3, Ch. 634, L. 1983.)"

27
28 **Section 67.** Section 15-30-117, MCA, is amended to read:

29 "15-30-117. **Net operating loss -- computation.** (1) A Montana net operating loss must be
30 determined in accordance with section 172 of the Internal Revenue Code of 1954 (26 U.S.C. 172) or as

that section may be labeled or amended and in accordance with the following:

(a) The net operating loss deduction for Montana purposes is increased by the following:

(i) that portion of the federal income tax and motor vehicle tax allowed as a deduction under 15-30-121 or 15-30-131 ~~which~~ that is attributable to income from a Montana trade or business; and

(ii) Montana wages and salaries allowed as a business deduction under 15-30-111(4).

(b) The net operating loss deduction for Montana purposes is decreased by the following:

(i) interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a);

(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as Montana business income;

(iii) state income tax; and

(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income.

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 (26 U.S.C. 172) or as that section may be labeled or amended, a net operating loss does not include:

(a) income defined as exempt from state taxation under 15-30-111(2); or

(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 (26 U.S.C. 63) or as that section may be labeled or amended."

Section 68. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

~~(1)(a)~~ (a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

~~(a)(i)~~ (i) items provided for in 15-30-123;

~~(a)(ii)~~ (ii) state income tax paid;

~~(a)(iii)~~ (iii) one-half of premium payments for medical care as provided in subsection ~~(a)~~ (2);

~~(2)(b)~~ (b) federal income tax paid within the tax year;

~~(3)(c)~~ (c) expenses of household and dependent care services as outlined in subsections ~~(3)(a) through (3)(e)~~ (1)(c)(i) through (1)(c)(iii) and (3) and subject to the limitations and rules as set out in

subsections ~~(3)(d) through (3)(f)~~ (1)(c)(iv) through (1)(c)(vi), as follows:

~~(a)(i)~~ expenses for household and dependent care services necessary for gainful employment incurred for:

~~(A)~~ a dependent under 15 years of age for whom an exemption can be claimed;

~~(B)~~ a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

~~(C)~~ a spouse who is unable to provide self-care because of physical or mental illness;

~~(b)(ii)~~ employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

~~(A)~~ household services that are attributable to the care of the qualifying individual; and

~~(B)~~ care of an individual who qualifies under subsection ~~(3)(a)~~ (1)(c)(i);

~~(c)(iii)~~ expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

~~(d)(iv)~~ the amounts deductible in subsections ~~(3)(a) through (3)(c)~~ (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

~~(A)~~ a deduction is allowed under subsection ~~(3)(a)~~ (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;

~~(B)~~ expenses for services in the household are deductible under subsection ~~(3)(a)~~ (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection ~~(3)(a)(i)~~ (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

~~(I)~~ \$2,400 in the case of one qualifying individual;

~~(II)~~ \$3,600 in the case of two qualifying individuals; and

~~(III)~~ \$4,800 in the case of three or more qualifying individuals;

~~(v)~~ if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

~~(vi)~~ for purposes of this subsection ~~(3)~~ (1)(c):

1 ~~(i)(A)~~ married couples shall file a joint return or file separately on the same form;

2 ~~(iii)(B)~~ if the taxpayer is married during any period of the tax year, employment-related expenses
3 incurred are deductible only if:

4 ~~(A)(i)~~ both spouses are gainfully employed, in which case the expenses are deductible only to the
5 extent that they are a direct result of the employment; or

6 ~~(B)(ii)~~ the spouse is a qualifying individual described in subsection ~~(3)(a)(iii)~~ (1)(c)(i)(C);

7 ~~(iii)(C)~~ an individual legally separated from the individual's spouse under a decree of divorce or of
8 separate maintenance may not be considered as married;

9 ~~(iv)(D)~~ the deduction for employment-related expenses must be divided equally between the
10 spouses when filing separately on the same form;

11 ~~(v)(E)~~ payment made to a child of the taxpayer who is under 19 years of age at the close of the
12 tax year and payments made to an individual with respect to whom a deduction is allowable under
13 15-30-112(5) are not deductible as employment-related expenses;

14 ~~(4)(d)~~ in the case of an individual, political contributions determined in accordance with the
15 provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for
16 the tax year ended December 31, 1978;

17 ~~(5)(e)~~ that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 that
18 was not otherwise deducted in computing taxable income;

19 ~~(6)(f)~~ contributions to the child abuse and neglect prevention program provided for in 41-3-701,
20 subject to the conditions set forth in 15-30-156;

21 ~~(7)(g)~~ one-half of premium payments, except premiums deducted in determining Montana adjusted
22 gross income, for:

23 ~~(a)(i)~~ insurance for medical care made directly by the taxpayer; and

24 ~~(b)(ii)~~ long-term care insurance with benefits that meet or exceed the minimum standards as
25 established by the state insurance commissioner; and

26 ~~(8)(h)~~ contributions to the Montana drug abuse resistance education program provided for in
27 44-2-702, subject to the conditions set forth in 15-30-159.

28 ~~(9)(2)~~ For the purpose of subsection ~~(7)(a)~~ (1)(g)(i), deductible medical insurance premiums are
29 those premiums that provide payment for medical care as defined by 26 U.S.C. 213(d).

30 ~~(10)(3)~~ (a) Subject to the conditions of subsection ~~(3)~~ (1)(c), a taxpayer who operates a family

1 day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the
2 taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct
3 employment-related expenses considered to have been paid for the care of the child.

4 (b) The amount of employment-related expenses considered to have been paid by the taxpayer is
5 equal to the amount that the taxpayer charges for the care of a child of the same age for the same number
6 of hours of care. The employment-related expenses apply regardless of whether any expenses actually have
7 been paid. Employment-related expenses may not exceed the amounts specified in subsection ~~(3)(d)(iii)~~
8 (1)(c)(iv)(B).

9 (c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the
10 deduction under this subsection ~~(4)~~ (3). (Subsection ~~(8)~~ (1)(h) terminates on occurrence of
11 contingency--sec. 12, Ch. 808, L. 1991.)"

12
13 **Section 69.** Section 15-30-162, MCA, is amended to read:

14 "15-30-162. **Investment credit.** (1) There is allowed as a credit against the tax imposed by
15 15-30-103 a percentage of the credit allowed with respect to certain depreciable property under section
16 38 of the Internal Revenue Code of 1954 (26 U.S.C. 38), ~~as amended~~, or as that section ~~38~~ may be
17 renumbered or amended. However, rehabilitation costs as set forth under section ~~46(a)(2)(F)~~ of the Internal
18 Revenue Code of 1954 (26 U.S.C. 46), or as that section ~~46(a)(2)(F)~~ may be renumbered or amended, are
19 not to be included in the computation of the investment credit. The credit is allowed for the purchase and
20 installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954 (26
21 U.S.C. 38), as amended, if the property meets all of the following qualifications:

22 (a) it was placed in service in Montana; and

23 (b) it was used for the production of Montana adjusted gross income.

24 (2) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined
25 under section ~~46(a)(2)~~ of the Internal Revenue Code of 1954 (26 U.S.C. 46), ~~as amended~~, or as that
26 section ~~46(a)(2)~~ may be renumbered or amended.

27 (3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable
28 year may not exceed the taxpayer's tax liability for the taxable year or \$500, whichever is less.

29 (4) If property for which an investment credit is claimed is used both inside and outside this state,
30 only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator

1 of which is the number of days during the taxable year the property was located in Montana and the
2 denominator of which is the number of days during the taxable year the taxpayer owned the property. The
3 investment credit may be applied only to the tax liability of the taxpayer who purchases and places in
4 service the property for which an investment credit is claimed. The credit may not be allocated between
5 spouses unless the property is used by a partnership or small business corporation of which they are
6 partners or shareholders.

7 (5) The investment credit allowed by this section is subject to recapture as provided for in section
8 47 of the Internal Revenue Code of 1954 (26 U.S.C. 47), ~~as amended~~, or as that section 47 may be
9 renumbered or amended."

10
11 **Section 70.** Section 15-30-201, MCA, is amended to read:

12 **"15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions
13 apply:

14 (1) "Agricultural labor" means all services performed on a farm or ranch in connection with
15 cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity,
16 including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry,
17 and fur-bearing animals and wildlife.

18 (2) "Employee" means an officer, employee, or elected public official of the United States, the state
19 of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality
20 of the United States, the state of Montana, or a political subdivision of the United States or Montana. The
21 term also includes an officer of a corporation.

22 (3) "Employer" means the person for whom an individual performs or performed any service, of
23 whatever nature, as an employee of the person. However, if the person for whom the individual performs
24 or performed the service does not have control of the payment of the wages for the service, the term
25 means the person who has control of the payment of wages.

26 (4) "Independent contractor" means an individual who renders service in the course of an
27 occupation and:

28 (a) has been and will continue to be free from control or direction over the performance of the
29 services, both under contract and in fact; and

30 (b) is engaged in an independently established trade, occupation, profession, or business.

1 (5) "Lookback period" means the 12-month period ending the preceding June 30.

2 (6) "Wages" means all remuneration, other than fees paid to a public official, for services
3 performed by an employee for the employer, including the cash value of all remuneration paid in any
4 medium other than cash, except that the term does not include remuneration paid:

5 (a) for active service as a member of the regular armed forces of the United States, as defined in
6 10 U.S.C. 101~~(33)~~;

7 (b) for agricultural labor;

8 (c) for domestic service in a private home, local college club, or local chapter of a college fraternity
9 or sorority;

10 (d) for casual labor not in the course of the employer's trade or business performed in any calendar
11 quarter by an employee, unless the cash remuneration paid for the service is \$50 or more and the service
12 is performed by an individual who is regularly employed by the employer to perform the service. For
13 purposes of this subsection ~~(d)~~ (6)(d), an individual is considered to be regularly employed by an employer
14 during a calendar quarter only if:

15 (i) on each of 24 days during a quarter, the individual performs service not in the course of the
16 employer's trade or business for the employer for some portion of the day; and

17 (ii) the individual was regularly employed, as determined under subsection (6)(d)(i), by the employer
18 in the performance of service during the preceding calendar quarter.

19 (e) for services by a citizen or resident of the United States for a foreign government or an
20 international organization;

21 (f) for services performed by an ordained, commissioned, or licensed minister of a church in the
22 exercise of the ministry or by a member of a religious order in the exercise of duties required by the order;

23 (g) (i) for services performed by an individual under 18 years of age in the delivery or distribution
24 of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery
25 or distribution; or

26 (ii) for services performed by an individual in and at the time of the sale of newspapers or magazines
27 to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by
28 the individual at a fixed price, with the individual's compensation based on the retention of the excess of
29 the price over the amount at which the newspapers or magazines are charged to the individual, whether
30 or not the individual is guaranteed a minimum amount of compensation for the service or is entitled to be

1 credited with the unsold newspapers or magazines turned back;

2 (h) for services not in the course of the employer's trade or business to the extent paid in any
3 medium other than cash when the payments are in the form of lodgings or meals and the services are
4 received by the employee at the request of and for the convenience of the employer;

5 (i) to or for an employee as a payment for or a contribution toward the cost of any group plan or
6 program that benefits the employee, including but not limited to life insurance, hospitalization insurance for
7 the employee or dependents, and employees' club activities;

8 (j) as tips or gratuities that are in accordance with section 3402(k) or service charges that are
9 covered by section 3401 of the Internal Revenue Code of 1954 (26 U.S.C. 3402(k) or 3401), as amended
10 and applicable on January 1, 1983, received by persons for services rendered by them to patrons of
11 premises licensed to provide food, beverage, or lodging;

12 (k) by an employer for dependent care assistance actually provided to or on behalf of an employee
13 and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in
14 section 129(b) of the Internal Revenue Code (26 U.S.C. 129(b)) as it read on January 1, 1989. (Subsection
15 (6)(j) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

16
17 **Section 71.** Section 15-30-202, MCA, is amended to read:

18 "15-30-202. **Withholding of tax from wages.** Each employer, except an independent contractor,
19 making payment of wages shall withhold from wages a tax determined in accordance with the withholding
20 tax tables prepared and issued by the department. Persons on active service as members of the regular
21 armed forces of the United States, as defined in 10 U.S.C. 101(33), are not subject to the provisions of
22 this section."

23
24 **Section 72.** Section 15-31-102, MCA, is amended to read:

25 "15-31-102. **Organizations exempt from tax -- unrelated business income not exempt.** (1) Except
26 as provided in subsection (3), there ~~shall~~ may not be taxed under this title any income received by any:

27 (a) labor, agricultural, or horticultural organization;

28 (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the
29 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for
30 the payment of life, sick, accident, or other benefits to the members of ~~such~~ the society, order, or

1 association or their dependents;

2 (c) cemetery company owned and operated exclusively for the benefit of its members;

3 (d) corporation or association organized and operated exclusively for religious, charitable, scientific,
4 or educational purposes, no part of the net income of which inures to the benefit of any private stockholder
5 or individual;

6 (e) business league, chamber of commerce, or board of trade not organized for profit, ~~and~~ no part
7 of the net income of which inures to the benefit of any private stockholder or individual;

8 (f) civic league or organization not organized for profit but operated exclusively for the promotion
9 of social welfare;

10 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable
11 purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

12 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation
13 company, mutual or cooperative telephone company, or like organization of a purely local character, the
14 income of which consists solely of assessments, dues, and fees collected from members for the sole
15 purpose of meeting its expenses;

16 (i) cooperative association or corporation engaged in the business of operating a rural electrification
17 system or systems for the transmission or distribution of electrical energy on a cooperative basis;

18 (j) corporations or associations organized for the exclusive purpose of holding title to property,
19 collecting income ~~therefrom~~ from the property, and turning over the entire amount ~~thereof~~ of the income,
20 less expenses, to an organization ~~which~~ that itself is exempt from the tax imposed by this title;

21 (k) wool and sheep pool, which is an association owned and operated by agricultural producers
22 organized to market association members' wool and sheep, the income of which consists solely of
23 assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income,
24 for this purpose, does not include expenses and money distributed to members contributing wool and
25 sheep;

26 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the
27 provisions of section 991, et seq., of the Internal Revenue Code (26 U.S.C. 991, et seq.) and that has in
28 effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation
29 makes such an election under federal law, each person who at any time is a shareholder of ~~such~~ the
30 corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the

1 same manner as provided by federal law for all periods for which the election is effective.

2 (m) farmers' market association not organized for profit, ~~and~~ no part of the net income of which
3 inures to the benefit of any member, but that is organized for the sole purpose of providing for retail
4 distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by
5 the seller.

6 (2) In determining the license fee to be paid under this part, there ~~shall~~ may not be included any
7 earnings derived from any public utility managed or operated by any subdivision of the state or from the
8 exercise of any governmental function.

9 (3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue
10 Code, of 1954 (26 U.S.C. 512), as amended, earned by any exempt corporation resulting in a federal
11 unrelated business income tax liability of more than \$100 ~~shall~~ must be taxed as other corporation income
12 is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this
13 section ~~must~~ shall file a copy of its federal exempt organization business income tax return on which it
14 reports its unrelated business income with the department of revenue."

15
16 **Section 73.** Section 15-31-131, MCA, is amended to read:

17 **"15-31-131. Credit for dependent care assistance.** (1) There is a credit against the taxes otherwise
18 due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by
19 the employer for dependent care assistance actually provided to or on behalf of an employee if the
20 assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets
21 the requirements of section ~~89(k) and~~ 129(d)(2) through (6) of the Internal Revenue Code 26 U.S.C.
22 129(d)(2) through (d)(6)).

23 (2) (a) The amount of the credit allowed under subsection (1) is 20% of the amount paid or
24 incurred by the employer during the taxable year, but the credit may not exceed \$1,250 of day-care
25 assistance actually provided to or on behalf of the employee.

26 (b) For the purposes of this subsection, marital status must be determined under the rules of
27 section 21(e)(3) and (4) of the Internal Revenue Code (26 U.S.C. 21(e)(3) and (e)(4)).

28 (c) In the case of an onsite facility, the amount upon which the credit allowed under subsection
29 (1) is based, with respect to any dependent, must be based upon utilization and the value of the services
30 provided.

(3) An amount paid or incurred during the taxable year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code (26 U.S.C. 129(c)(1) or (c)(2)).

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(5) If the credit allowed under subsection (1) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code (26 U.S.C. 129(b)). For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.

(7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(8) If the taxpayer is an S_e corporation, as defined in section 1361 of the Internal Revenue Code (26 U.S.C. 1361), and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(9) For purposes of the credit allowed under subsection (1):

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code ~~(26 U.S.C. 129(e))~~ apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation, or profession in this state.

~~(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on January 1, 1989."~~

Section 74. Section 15-32-102, MCA, is amended to read:

"15-32-102. Definitions. As used in this part, the following definitions apply:

(1) "Building" means:

(a) a single or multiple dwelling, including a mobile home; ~~or~~

(b) a building used for commercial, industrial, or agricultural purposes, that is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or both of the following results of an investment:

(a) reducing the waste or dissipation of energy; or

(b) reducing the amount of energy required to accomplish a given quantity of work.

(4) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

~~(5) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.~~

~~(6)~~(5) "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace that:

(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203; or

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of environmental quality pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203.

(6) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(7) "Recognized nonfossil forms of energy generation" means:

(a) a system that captures energy or converts energy sources into usable sources by using:

(i) solar energy, including passive solar systems;

(ii) wind;

(iii) solid waste; or

(iv) the decomposition of organic wastes;

(b) a system that produces electric power from solid wood wastes; or

(c) a small system that uses water power by means of an impoundment that is not over 20 acres in surface area."

Section 75. Section 15-32-201, MCA, is amended to read:

"15-32-201. Amount of credit -- to whom available. (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in the taxpayer's principal dwelling prior to January 1, 1993, or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's principal dwelling and is

1 equipped with an energy system for which the credit allowed by this part has never been claimed is entitled
2 to claim a tax credit in an amount equal to 10% of the first \$1,000 and 5% of the next \$3,000 of the cost
3 of the system, including installation costs, less grants received or, if the federal government provides for
4 a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the
5 first \$1,000 and 2 1/2% of the next \$3,000 of the cost of the system, including installation costs, less
6 grants received, against the income tax liability imposed against the taxpayer pursuant to chapter 30.

7 (2) A resident individual taxpayer who completes installation of an energy system using a low
8 emission wood or biomass combustion device, as defined in 15-32-102(6)(a)(5)(a), in the taxpayer's
9 principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 20% of
10 the first \$1,000 and 10% of the next \$3,000 of the cost of the system, including the installation costs,
11 against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

12 (3) A resident individual taxpayer who completes installation of an energy system that uses a low
13 emission wood or biomass combustion device, as defined in 15-32-102(6)(b)(5)(b), in the taxpayer's
14 principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of
15 the first \$1,000 and 5% of the next \$3,000 of the cost of the system, including the installation costs,
16 against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30."

17
18 **Section 76.** Section 15-32-403, MCA, is amended to read:

19 "15-32-403. **Limitation on credit.** Whenever any federal wind energy tax credits for a system that
20 generates electricity by means of wind power are allowed or allowable under section ~~48(1)~~ 48(a) of the
21 Internal Revenue Code (26 U.S.C. 48(a)) or any other federal law, the state credit allowed by 15-32-403
22 must be reduced by the amount of federal credits so that the effective credit does not exceed 60% of the
23 eligible costs."

24
25 **Section 77.** Section 15-36-324, MCA, is amended to read:

26 "15-36-324. **Distribution of taxes.** (1) For each calendar quarter, the department of revenue shall
27 determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of
28 distribution of the taxes to county and school taxing units, the department shall determine the amount of
29 oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, and
30 horizontally drilled wells located in the taxing unit.

(2) Except as provided in subsections (3) and (4), oil production taxes must be distributed as follows:

(a) The amount equal to 41.6% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (7).

(b) The remaining 58.4% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (8).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (7).

(4) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on production from horizontally drilled wells and on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (7).

(5) Except as provided in subsection (6), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14.6% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (7).

(b) The remaining 85.4% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (8).

(6) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (7).

(7) The department shall, in accordance with the provisions of 15-1-501~~(6)~~, distribute the state portion of oil and natural gas production taxes, including late payment interest and penalty collected, as follows:

(a) 85% to the state general fund;

(b) 4.3% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 10.7% to be distributed as provided by 15-38-106(2).

(8) (a) For the purpose of distribution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under 15-36-323 according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to the total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which the distribution occurs. The amount of oil and natural gas production taxes distributions must be calculated and distributed as follows:

(i) By the dates referred to in subsection (9), the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection (8)(a), by the units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which the distribution occurs.

(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsection (8)(a) must be calculated and distributed in the following manner:

(A) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(B) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(b) Except as provided in subsection (8)(c), the county treasurer shall distribute the money received under subsection (9) from pre-1985 wells to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (8)(b), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing

units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (8)(c)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(d) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (8)(d)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells and horizontally drilled wells completed after December 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(b) and (5)(b) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(f) The allocation to the county in subsection (8)(e) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The money distributed in subsection (8)(e) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(h) The oil and natural gas production taxes distributed under subsection (8)(b) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(i) The oil and natural gas production taxes distributed under subsection (8)(e) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (8)(h) and (8)(i) is for the exclusive use and benefit of the county and school taxing units.

(9) The department shall remit the amounts to be distributed in subsection (8) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(10) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes."

Section 78. Section 15-36-325, MCA, is amended to read:

"15-36-325. Local government severance tax payments for calendar year 1995 production -- not subject to I-105 limitations. (1) The local government severance tax imposed under 15-36-101, as that section read before January 1, 1996, for calendar year 1995 production is due as follows:

~~(a) for oil and natural gas production occurring in the first calendar quarter of 1995, the tax is due May 31, 1996;~~

~~(b)~~ (a) for oil and natural gas production occurring in the second calendar quarter of 1995, the tax is due May 31, 1997;

1 ~~(a)(b)~~ for oil and natural gas production occurring in the third calendar quarter of 1995, the tax is
2 due May 31, 1998; and

3 ~~(d)(c)~~ for oil and natural gas production occurring in the fourth calendar quarter of 1995, the tax
4 is due May 31, 1999.

5 (2) (a) If the taxpayer pays the entire local government severance tax liability for calendar year
6 1995 on or before June 30, 1996, the taxpayer must receive a 6% reduction in the total local government
7 severance tax liability.

8 (b) Any payment of local government severance taxes for calendar year 1995 made on or before
9 June 30, 1997, does not accrue interest. Any payment of local government severance taxes for calendar
10 year 1995 made after June 30, 1997, must accrue interest at the rate of 1% a month or fraction of a
11 month from July 1, 1997, to the date of payment. Any payment for the third quarter of 1995 received after
12 May 31, 1998, and any payment for the fourth quarter of 1995 received after May 31, 1999, is subject
13 to the late payment penalty provisions in 15-36-311.

14 (c) In the case of the dissolution of the operator or a change in the operator of any lease or unit,
15 any unpaid local government severance tax for calendar year 1995 becomes due on the date of dissolution
16 or on the date of the change in operator. The operator is subject to the provisions of subsection (2)(a)
17 regarding the 6% tax liability reduction or the provisions of subsection (2)(b) regarding interest and
18 penalties.

19 (3) The department shall determine the amount of tax collected under subsections (1) and (2) from
20 within each taxing unit.

21 (4) For purposes of the distribution of local government severance taxes collected under this
22 section, the department shall use the unit value of oil and gas for each taxing unit as determined in
23 15-36-323.

24 (5) The local government severance tax must be deposited in the agency fund in the state treasury
25 and transferred to the county for distribution as provided in subsection (6).

26 (6) For the purpose of the distribution of the local government severance tax for calendar year
27 1995 production, the department shall adjust the unit value determined under this section according to the
28 ratio that the local government severance taxes collected during the quarters for which the distribution
29 occurs plus penalties and interest on delinquent local government severance taxes bears to the total liability
30 for local government severance taxes for the quarters for which the distribution occurs. The taxes must

1 be calculated and distributed as follows:

2 (a) By July 31 of each of the years ~~1996~~, 1997, 1998, and 1999, the department shall calculate
3 and distribute to each eligible county the amount of local government severance tax for calendar year 1995
4 production, determined by multiplying the unit value, as adjusted in this subsection (6), by the units of
5 production on which the local government severance tax was owed during calendar year 1995 production.

6 (b) Any amount by which the total tax liability exceeds or is less than the total distributions
7 determined in subsection (6)(a) must be calculated and distributed in the following manner:

8 (i) The excess amount or shortage must be divided by the total distribution determined for that
9 period to obtain an excess or shortage percentage.

10 (ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this
11 amount must be added to the distribution to each respective taxing unit.

12 (iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this
13 amount must be subtracted from the distribution to each respective taxing unit.

14 (7) (a) The county treasurer shall distribute the money received under subsection (6) between the
15 county and school taxing units. The distribution between county and school taxing units is the ratio of the
16 number of mills levied for fiscal year 1990 against 1988 production in each taxing unit for the county and
17 schools, including the county equalization levies that were in effect under 20-9-331 and 20-9-333 as those
18 sections read on July 1, 1989, and the university 6-mill levy imposed under 20-25-423, except that a
19 distribution may not be made to a municipal taxing unit or the state equalization aid levy imposed under
20 20-9-360. Distribution of money for the county equalization levies and the university levy must be remitted
21 to the state by the county treasurer. The amounts distributed under subsections (7)(b) and (7)(c) are for
22 the exclusive use of county and school taxing units.

23 (b) The county treasurer shall deposit the money from subsection (7)(a) allocated to county levies
24 to the oil and natural gas ~~tax~~ accelerated tax fund.

25 (c) The trustees of a school district may allocate any payment received under subsection (7)(a) to
26 any budget fund of the district or to the miscellaneous programs fund established in 20-9-507. The trustees
27 shall direct the county treasurer to deposit the local government severance tax payments under this section
28 to the funds of the district in accordance with the allocations determined by the trustees.

29 (8) Local government severance tax payments to a county pursuant to this section are not subject
30 to the limitations of Title 15, chapter 10, part 4. Payments of local government severance tax pursuant to

1 this section may not be used for county classification purposes under 7-1-2111 and may not be considered
2 in the determination of bonding limits under 7-7-2101, 7-7-2203, 7-14-2524, and 7-16-2327."

3
4 **Section 79.** Section 15-38-104, MCA, is amended to read:

5 **"15-38-104. Tax on mineral production.** (1) Except as provided in subsections (2) through ~~(4)~~ (5),
6 the annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or
7 producing a mineral is \$25, plus an additional amount computed on the gross value of product that was
8 derived from the business work or operation within this state during the calendar year immediately
9 preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction from
10 the ground, if in excess of \$5,000. Unless otherwise provided in a contract or lease, the pro rata share of
11 any royalty owner or owners may be deducted from any settlements under the lease or leases or division
12 of proceeds orders or other contracts.

13 (2) The annual tax to be paid by a person engaged in or carrying on the business of mining,
14 extracting, or producing:

15 (a) talc is \$25 plus an additional amount computed on the gross value of product for talc derived
16 from the business work or operation within this state during the calendar year immediately preceding at the
17 rate of 4% of the gross value of product in excess of \$625; and

18 (b) coal is \$25 plus an additional amount computed on the gross value of product for coal produced
19 in Montana during the calendar year immediately preceding at the rate of 0.4% of the gross value of
20 product in excess of \$6,250.

21 (3) The annual tax to be paid by a person engaged in or carrying on the business of mining,
22 extracting, or producing vermiculite is \$25 plus an additional amount computed on the gross value of
23 product for vermiculite derived from the business work or operation within this state during the calendar
24 year immediately preceding at the rate of 2% of the gross value of product in excess of \$1,250.

25 (4) The annual tax to be paid by a person engaged in or carrying on the business of mining,
26 extracting, or producing limestone for the production of quicklime is \$25 plus an additional amount
27 computed on the gross value of product for limestone derived from the business work or operation within
28 this state during the calendar year immediately preceding at the rate of 10% of the gross value of product
29 in excess of \$250.

30 (5) The annual tax to be paid by a person engaged in or carrying on the business of mining,

extracting, or producing industrial garnets and associated byproducts is \$25 plus an additional amount computed on the gross value of product for industrial garnets and associated byproducts derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1% on the gross value of product in excess of \$2,500."

Section 80. Section 15-38-106, MCA, is amended to read:

"15-38-106. Payment of tax -- records -- collection of taxes -- refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501~~(6)~~, deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

(a) 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905;

(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and

(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104.

(3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 81. Section 15-38-201, MCA, is amended to read:

1 **"15-38-201. Creation of resource indemnity trust fund.** For the purpose of carrying out this
2 chapter, there is a resource indemnity trust fund in the nonexpendable trust fund type in the amount of
3 \$100 million. The resource indemnity fund ~~shall~~ must be credited with all ~~moneys~~ money received as ~~herein~~
4 provided in this part."

5
6 **Section 82.** Section 15-38-202, MCA, is amended to read:

7 **"15-38-202. Investment of resource indemnity trust fund -- expenditure -- minimum balance. (1)**

8 All money paid into the resource indemnity trust fund, including money payable into the fund under the
9 provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments.
10 ~~All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund~~
11 ~~until it has reached the sum of \$10 million. Thereafter, only~~ Only the net earnings may be appropriated and
12 expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts ~~must~~ may be
13 appropriated by the legislature and expended, provided that the balance in the fund may never be less than
14 \$100 million.

15 (2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the
16 resource indemnity trust fund \$240,000, which is statutorily appropriated, as provided in 17-7-502, from
17 the renewable resource grant and loan program state special revenue account to support the operations of
18 the environmental science-water quality instructional programs at Montana state university-northern, to be
19 used for support costs, for matching funds necessary to attract additional funds to further expand statewide
20 impact, and for enhancement of the facilities related to the programs.

21 (b) At the beginning of each biennium, there is allocated from the interest income of the resource
22 indemnity trust fund:

23 (i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the
24 conditions of 75-1-1101;

25 (ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account
26 pursuant to the conditions of 82-11-161;

27 (iii) ~~beginning in fiscal year 1996,~~ \$2 million to be deposited into the renewable resource grant and
28 loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

29 (iv) ~~beginning in fiscal year 1996,~~ \$3 million to be deposited into the reclamation and development
30 grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

(v) ~~beginning in fiscal year 1996~~, \$500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate ~~funds from the resource indemnity trust interest account~~ other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 83. Section 15-70-125, MCA, is amended to read:

"15-70-125. Highway nonrestricted account. There is a highway nonrestricted account in the state special revenue fund. All interest and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501~~(6)~~, be placed in the highway nonrestricted account."

Section 84. Section 15-70-235, MCA, is amended to read:

"15-70-235. Tribal motor fuels administration account. (1) There is a special revenue account called the tribal motor fuels administration account.

(2) The administrative expenses and refund amounts deducted by the department of transportation under ~~15-70-234(3)~~ an agreement must be deposited in the tribal motor fuels administration account.

(3) The tribal motor fuels administration account may be expended by the department of

1 transportation or by the department of justice only for the purposes of administering the motor fuels tax
2 and providing refunds under ~~15-70-234~~ an agreement."

3
4 **Section 85.** Section 15-70-236, MCA, is amended to read:

5 **"15-70-236. Tribal motor fuels tax account.** (1) There is a special revenue account called the tribal
6 motor fuels tax account.

7 (2) The tax collected under 15-70-234, except the administrative expenses and refund amounts
8 deducted under ~~15-70-234~~ (3) an agreement, must be deposited in the tribal motor fuels tax account.

9 (3) The money in the tribal motor fuels tax account must be disbursed to the tribe, as provided for
10 in the agreement entered into pursuant to 15-70-234, on a quarterly basis."

11
12 **Section 86.** Section 16-1-106, MCA, is amended to read:

13 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

14 (1) "Agency franchise agreement" means an agreement between the department and a person
15 appointed to sell liquor and table wine as a commission merchant rather than as an employee.

16 (2) "Agency liquor store" means a store operated under an agency franchise agreement in
17 accordance with this code for the purpose of selling liquor at either the posted or retail price for
18 off-premises consumption.

19 (3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

20 (4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink
21 that contains more than 0.5% of alcohol by volume.

22 (5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

23 (6) "Beer importer" means a person other than a brewer who imports malt beverages.

24 (7) "Brewer" means a person who produces malt beverages.

25 (8) "Community" means:

26 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;

27 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
28 community for census purposes; and

29 (c) in a consolidated local government, the area of the consolidated local government not otherwise
30 incorporated.

(9) "Department" means the department of revenue, unless otherwise specified.

(10) "Immediate family" means a spouse, dependent children, or dependent parents.

(11) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

~~(12) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.~~

~~(13)~~(12) "Liquor" means an alcoholic beverage except beer and table wine.

~~(14)~~(13) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

~~(15)~~(14) "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(16)~~(15) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

~~(17)~~(16) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

~~(18)~~(17) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

~~(19)~~(18) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

~~(20)~~(19) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

~~(21)~~(20) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

~~(22)~~(21) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(23)~~(22) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(24)~~(23) "Table wine" means wine that contains not more than 16% alcohol by volume.

~~(25)~~(24) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

~~(26)~~(25) "Warehouse" means a building or structure located in Montana owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(27)~~(26) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 87. Section 16-1-201, MCA, is amended to read:

"16-1-201. Acts not covered by code. (1) Nothing in this code ~~shall prevent~~ prevents any brewer, distiller, or other person, ~~duly~~ licensed under the provisions of any statute of the United States of America for the manufacture of alcoholic beverages, from having or keeping alcoholic beverages in a place and in the manner authorized by or under any such statute.

(2) It is ~~hereby declared to be~~ the policy of the state of Montana that the manufacture of alcoholic beverages, including the distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws of the United States, ~~shall be~~ is authorized and permitted by any brewer, distiller, rectifier, or other person ~~duly~~ licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States, ~~provided the~~ The department may ~~make such~~ adopt rules ~~as that~~ the department ~~deems~~ considers necessary with respect ~~thereto to the manufacture of alcoholic beverages.~~ The rules may not be inconsistent with this code or

1 with the statutes of the United States of America or regulations issued under the provisions of the Federal
2 Alcohol Administration Act, 27 U.S.C. 201 through 212, inclusive, or regulations issued under the
3 provisions of chapter 51 of the Internal Revenue Code, ~~26 U.S.C. 5001 through 5603~~, inclusive.

4 (3) Nothing in this code ~~shall prevent~~ prevents:

5 (a) the sale of liquor or table wine by any person to the department;

6 (b) the purchase, importation, and sale of liquor and table wine by the department for the purposes
7 of and in accordance with this code."

8
9 **Section 88.** Section 16-1-202, MCA, is amended to read:

10 **"16-1-202. Preparations not subject to code.** (1) Subject to the provisions of this section, nothing
11 in this code ~~shall~~, by reason only that ~~such a~~ preparation contains alcohol, ~~prevent~~ prevents the
12 manufacture, sale, purchase, or consumption of any:

13 (a) extract, essence, or tincture or other preparation containing alcohol ~~which that~~ is prepared
14 according to a formula of the United States Pharmacopoeia or according to a formula approved of by the
15 department; or

16 (b) proprietary or patent medicine prepared according to a formula approved of by the department.

17 (2) The department, if of the opinion that any ~~such~~ proprietary or patent medicine, extract,
18 essence, tincture, or preparation ~~which that~~ contains alcohol or any other preparation of a solid, semisolid,
19 or liquid nature ~~containing that contains~~ alcohol ~~which, can be used or any that an~~ extract from ~~which, the~~
20 substance can be used as a beverage or as the ingredient of ~~any a~~ beverage, may prohibit the retail sale
21 ~~thereof by retail within the state or the possession of the same or the possession of the substance for retail~~
22 ~~sale by retail~~ within the state, except by ~~a state~~ an agency liquor store or by persons ~~duly~~ licensed by the
23 department to keep and sell the ~~same~~ substance by retail in accordance with this code and the regulations
24 made ~~thereunder~~ under this code.

25 (3) The department shall notify the manufacturer or vendor of ~~such the~~ proprietary or patent
26 medicine, extract, essence, tincture, or preparation of the prohibition."

27
28 **Section 89.** Section 16-2-101, MCA, is amended to read:

29 **"16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement**
30 **kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate

1 agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

2 (2) (a) The department may from time to time fix the posted prices at which the various classes,
3 varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor
4 stores.

5 (b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the
6 various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold
7 liquor licenses and to all other persons at the retail price established by the agent.

8 (ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor
9 store may place a liquor order with the department at its state liquor warehouse in the manner to be
10 established by the department.

11 (B) The agency liquor store's purchase price is the department's posted price less the agency liquor
12 store's commission rate in the state agency franchise agreement and less the agency liquor store's weighed
13 average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or
14 employee-operated state liquor stores that were operating June 30, 1994, the weighted average discount
15 ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case
16 discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales,
17 based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in
18 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other
19 stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average
20 ratio in fiscal year 1994 for similar sized stores for 1 year of operation. ~~Thereafter, the~~ The weighted
21 discount ratio must be computed on the store's first 12 months of operation.

22 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid
23 for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

24 (c) An agency liquor store may sell table wine at retail for off-premises consumption.

25 (3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with
26 populations over 3,000.

27 (4) Agency liquor stores must receive commissions payable as follows:

28 (a) a 10% commission for agencies in communities with less than 3,000 in population, unless
29 adjusted pursuant to subsection (6) or (8);

30 (b) a commission established by competitive bidding unless adjusted pursuant to subsection (6)

1 or (8) for agencies in communities with 3,000 or more in population.

2 (5) An agency franchise agreement must:

3 (a) be effective for a 10-year period and may be renewed every 10 years if the requirements of the
4 agency franchise agreement have been satisfactorily performed;

5 (b) require the agent to maintain comprehensive general liability insurance and liquor liability
6 insurance throughout the term of the agency franchise agreement in an amount established by the
7 department of administration. The insurance policy must:

8 (i) declare the department as an additional insured; and

9 (ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising
10 from or in connection with the agent's negligent acts or activities in the execution and performance of the
11 agency franchise agreement.

12 (c) provide that upon termination by the department for cause or upon mutual termination, the
13 agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate
14 time, the department may immediately repossess all liquor inventory, wherever located.

15 (d) specify the reasonable service and space requirements that the agent will provide throughout
16 the term of the agency franchise agreement.

17 (6) (a) The commission percentage that the department pays the agent under an agency franchise
18 agreement may be reviewed on July 1, 1998, and every 3 years thereafter at the request of either party.
19 If the agent concurs, the department may adjust the commission percentage to be paid during the remaining
20 term of the agency franchise agreement or until the next time the commission percentage is reviewed, if
21 that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal
22 to the average commission percentage being paid agents with similar sales volumes if:

23 (i) the agent's commission percentage is less than the average; and

24 (ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

25 (b) The adjusted commission percentage determined under subsection (6)(a) may be greater than
26 the average commission paid agents with similar sales volume:

27 (i) if the agent demonstrates that:

28 (A) the agent has experienced cost increases that are beyond the agent's control, including but not
29 limited to increases in the federally established minimum wage or escalation in prevailing rent; and

30 (B) the average commission percentage is insufficient to yield net income commensurate with net

1 income experienced before the cost increases occurred; and

2 (ii) if the department demonstrates that it is unable to indicate adjustments in the requirements
3 specified in the agent's franchise agreement that will eliminate the impact of cost increases.

4 (7) The liability insurance requirement may be reviewed every 3 years after July 1, 1995, at the
5 request of either the agent or the department. If the agent concurs, the department may adjust the
6 requirements to be effective during the remaining term of the agency franchise agreement if the
7 adjustments adequately protect the state from risks associated with the agent's negligent acts or activities
8 in the execution and performance of the agency franchise agreement. The amount of liability insurance
9 coverage may not be less than the minimum requirements of the department of administration.

10 (8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed
11 for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency
12 franchise agreement. Except for establishing the new term and except for a commission percentage that
13 may be negotiated as provided in subsection (8)(b), changes in the agency franchise agreement as a result
14 of a renewal may not be made unless the agent and the department mutually agree.

15 (b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the
16 department determines that an adjustment of the commission percentage paid to the agent is in the best
17 interests of the state, the department shall notify the agent of that determination.

18 (c) If the agent does not concur with the department's commission percentage adjustment, the
19 department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject
20 to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are
21 received by the department for the agency franchise at the adjusted commission percentage, the agent
22 under the existing franchise agreement has a preference right to renew the franchise agreement by
23 concurring in the adjusted commission percentage.

24 (d) If the agent under the existing franchise agreement declines to exercise the preference right
25 under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this
26 chapter with a person who accepted the adjusted commission percentage.

27 (e) If the agent exercises the preference right and believes the adjusted commission percentage
28 to be inadequate or not in the best interests of the state, the agent may request an administrative hearing.
29 The request must contain a statement of reasons why the agent believes the commission percentage to
30 be inadequate or not in the state's best interests. The department shall grant the request for a hearing if

1 it determines that the statement indicates evidence that the adjusted commission percentage is inadequate
2 or not in the state's best interests. The department may, after the hearing, adjust the commission
3 percentage if the agent shows that the commission percentage is inadequate or not in the best interests
4 of the state. If the department increases the commission percentage rate, the department shall set forth
5 its findings and conclusions in writing and inform the agent and the other persons who offered to enter into
6 an agency agreement at the adjusted commission rate.

7 (9) (a) The department may terminate an agency franchise agreement if the agent has not
8 satisfactorily performed the requirements of the agency franchise agreement because the agent:

9 (i) charges retail prices that are less than the department's posted price for liquor, sells liquor to
10 persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than
11 the discount provided for in 16-2-201 to persons who hold liquor licenses;

12 (ii) fails to maintain sufficient liability insurance;

13 (iii) has not maintained a quantity and variety of product available for sale commensurate with
14 demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability
15 to purchase special orders;

16 (iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has
17 operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the
18 purpose of making purchases of liquor; or

19 (v) fails to comply with the express terms of the agency franchise agreement.

20 (b) The department shall give an agent 30 days' notice of its intent to terminate the agency
21 franchise agreement for cause and specify the unmet requirements. The agent may contest the termination
22 and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall
23 suspend its termination order until after a final decision has been made pursuant to the Montana
24 Administrative Procedure Act.

25 (c) In the case of failure to make timely payments to the department for liquor purchased, the
26 department may terminate the agency franchise agreement and immediately repossess any liquor purchased
27 and in the possession of the agent. If an agency franchise agreement is terminated, the agent may contest
28 the termination and request a hearing within 30 days of the department's repossession of the liquor. The
29 agency liquor store shall remain closed until a final decision has been reached following a hearing held
30 pursuant to the Montana Administrative Procedure Act.

1 Register and the Administrative Rules of Montana.

2 (m) petition the department for a declaratory ruling as to the applicability of any statutory provision
3 or of any rule or order of the department. A copy of a declaratory ruling must be filed with the secretary
4 of state for publication in the register. A declaratory ruling or the refusal to issue a ruling is subject to
5 judicial review in the same manner as decisions or orders in contested cases under the Montana
6 Administrative Procedure Act.

7 (n) petition for judicial review of the sufficiency of the reasons for the department's finding of
8 imminent peril to the public health, safety, or welfare, cited in support of an emergency or temporary rule
9 proposed by the department under 2-4-303; and

10 (o) require the department to conduct the biennial review of its rules as required in 2-4-314 and
11 report its findings to the committee.

12 (3) The committee shall exercise legislative oversight of the department of revenue, including
13 without limitation the review of:

14 (a) proposed budgets;

15 (b) proposed legislation;

16 (c) pending litigation; and

17 (d) major contracts and personnel actions of the department.

18 (4) The committee may investigate and issue reports on any matter concerning taxation or the
19 department of revenue.

20 (5) (a) The committee shall have prepared by December 1 for introduction during each regular
21 session of the legislature in which a revenue bill is under consideration an estimate of the amount of
22 revenue projected to be available for legislative appropriation.

23 (b) The committee's estimate, as introduced in the legislature, constitutes the legislature's current
24 revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that
25 the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with
26 responsibilities for estimating revenues or costs, including the preparation of fiscal notes.

27 (c) The legislative ~~council~~ services division shall provide staff assistance to the committee. The
28 committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the
29 legislative auditor, the department of revenue, and any other agency that has information regarding any of
30 the tax or revenue bases of the state.

(6) The committee may:

(a) review the programs financed by coal severance tax funds;

(b) consider any matters relating to coal taxation; and

(c) prepare for the legislature a report, as provided in 5-11-210, on potential uses of the coal tax trust fund to develop a stable, strong, and diversified Montana economy that meets the needs of present and future generations of Montanans while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution."

Section 28. Section 5-22-101, MCA, is amended to read:

"5-22-101. Legislative oversight committee -- appointment -- staff assistance. (1) (a) There is a joint oversight committee on children and families. The oversight committee is composed of eight members who are appointed as follows:

(i) four members of the house of representatives, not more than two of whom may be from one political party, appointed by the speaker of the house; and

(ii) four members of the senate, not more than two of whom may be from one political party, appointed by the committee on committees.

(b) The members appointed under subsection (1)(a) must include representatives from the house appropriations subcommittee on human services and aging and the senate finance and claims subcommittee on human services and aging.

(2) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(3) Members are entitled to salary and expenses as provided in 5-2-302.

(4) The oversight committee may request staff assistance from the legislative ~~council~~ services division, which assistance may be provided within limits established by the legislative council, given other priorities and responsibilities.

(5) Each state agency that provides services or funding for a program or service for children and families shall provide assistance and information upon request of the oversight committee."

Section 29. Section 7-1-114, MCA, is amended to read:

"7-1-114. Mandatory provisions. (1) A local government with self-government powers is subject to the following provisions:

(a) ~~All~~ all state laws providing for the incorporation or disincorporation of cities and towns; for the annexation, disannexation, or exclusion of territory from a city or town; for the creation, abandonment, or boundary alteration of counties; and for city-county consolidation;

(b) ~~Sections 7-3-104 through 7-3-106, 7-3-111 through 7-3-114, and 7-3-1101 through 7-3-1105~~
Title 7, chapter 3, part 1;

(c) ~~All~~ all laws establishing legislative procedures or requirements for units of local government;

(d) ~~All~~ all laws regulating the election of local officials;

(e) ~~All~~ all laws ~~which~~ that require or regulate planning or zoning;

(f) ~~Any~~ any law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service;

(g) ~~Any~~ any law regulating the budget, finance, or borrowing procedures and powers of local governments, except that the mill levy limits established by state law ~~shall~~ do not apply;

(h) Title 70, chapters 30 and 31.

(2) These provisions are a prohibition on the self-government unit acting other than as provided."

Section 30. Section 7-2-2218, MCA, is amended to read:

"7-2-2218. Form of ballot. (1) If the proposed new county is to be formed from one county, or from portions of two or more existing counties, the ballot ~~shall~~ must be in the following form:

(a) ~~proclamation and~~ notice required by 7-2-2215 ~~shall~~ must require the electors to cast ballots ~~which shall~~ that contain the words "For the new county of (giving the name of the proposed new county) -- Yes" and "For the new county of (giving the name of the proposed new county) -- No".

(b) The ballots ~~shall~~ must also contain the names of individuals to be voted for to fill the various elective offices designated in the ~~proclamation~~ notice for counties of the class to which the proposed county will belong, as determined by the board of county commissioners, as ~~herein otherwise~~ provided in this part.

(c) There ~~shall~~ must also be printed upon the ballot the words "For the county seat" and the names of all cities or towns ~~which~~ that may have filed with the election administrator a petition, signed by at least 25 registered electors, nominating any city or town within the proposed new county for the county seat. The elector shall designate ~~his~~ the elector's choice for county seat by marking a cross (X) opposite the name of the city or town for which ~~he~~ the elector desires to cast ~~his ballot~~ a vote.

(2) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, the ~~proclamation and~~ notice required by 7-2-2215(1) ~~shall~~ must require the electors to cast ballots ~~which shall~~ that must contain the legal description of the territory to be taken from the county in which the election is held, together with any name or names for the territory that may be in common use, and the words "For the territory described (or commonly known as) to be detached from County and added to County -- Yes" and "For the territory described (or commonly known as) to be detached from County and added to County -- No".

Section 31. Section 7-2-2219, MCA, is amended to read:

"7-2-2219. Conduct of election. (1) (a) The board issuing the ~~proclamation and~~ notice of election pursuant to 7-2-2215 shall ~~cause~~ require the county election administrator to furnish to the election judges of each precinct in the proposed new county all election supplies and equipment necessary to conduct the election ~~and which that~~ are not specifically directed to be furnished by the election administrator of another county or counties.

(b) The election administrator of each county from which territory is taken for the proposed new county shall, not less than 5 days before the date of the election, furnish for each precinct within the proposed new county a precinct register for the precincts of the proposed new county ~~which that~~ are within their respective counties.

(2) The elections provided for in 7-2-2215 ~~shall be~~ are governed and controlled by the general election laws of the state, ~~so far as to the extent that the same~~ general election laws are applicable and except as otherwise provided ~~herein in this section~~. The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of these laws relating to primary elections in this state, apply to any election provided for in this part. All returns of an election ~~shall~~ must be made to and canvassed by the board of county commissioners calling the election.

(3) All nominations of candidates for offices required to be filled at the election ~~shall~~ must be made in the manner provided by law for the nomination of candidates by petition."

Section 32. Section 7-4-2106, MCA, is amended to read:

"7-4-2106. Vacancy on board of county commissioners. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

1 (2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or
2 otherwise, the remaining county commissioners ~~must~~ shall fill the vacancy, and ~~such~~ the appointee shall
3 hold office until the next general election unless otherwise provided in subsection (3) or (4). The procedure
4 to be used to fill the vacancy is as follows:

5 (a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the
6 county central committee of that party shall submit to the remaining commissioners three names of people
7 who have lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs, ~~and~~
8 ~~the~~ The remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the
9 remaining commissioners are unable to elect an appointee from the submitted list, they shall request a
10 second list of three names from the county central committee. The second list may not contain any of the
11 names submitted on the first list. The remaining commissioners shall then select an appointee from the
12 individuals named on both lists.

13 (b) If the former incumbent was independent or was originally nominated by a party that does not
14 meet the requirements of 13-10-601 or if the vacancy occurs from a failure to elect, the remaining
15 commissioners shall invite applications for the vacancy in a notice published as provided in 13-1-108 and
16 shall accept an application from any person who has lived in the unrepresented district for at least 2 years
17 preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these applicants
18 to fill the vacancy.

19 (3) Whenever a vacancy occurs 75 days or more before the general election held during the second
20 or fourth year of the term, an individual ~~shall~~ must be elected to complete the term at that general election.
21 The election procedure to be used to elect the successor is as follows:

22 (a) Whenever the vacancy occurs 75 days or more before the primary election during the second
23 or fourth year of the term, the same procedure ~~shall be utilized~~ must be used as is used to elect county
24 commissioners to full 6-year terms.

25 (b) Whenever the vacancy occurs after the 75th day preceding the primary election, any political
26 party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204.
27 A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a
28 candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The
29 petition for an independent candidate ~~shall~~ must be filed with the clerk and recorder on or before the 75th
30 day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13,

chapter 14.

(4) Whenever a vacancy occurs after the 75th day preceding the general election held during the fourth year of the term, the person appointed by the remaining county commissioners under ~~7-4-2106(2)~~ subsection (2) shall serve until the end of the term."

Section 33. Section 7-4-2206, MCA, is amended to read:

"7-4-2206. Vacancies. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Vacancies in all county offices, except that of county commissioner, ~~shall~~ must be filled by appointment by the board of county commissioners. Except for the justice of the peace, the appointee ~~shall~~ holds the office, if elective, until the next general election unless otherwise provided in subsection (3) or (4), and if not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second year of the term, an individual ~~shall~~ must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second year of the term, the same procedure ~~shall be utilized~~ must be used as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs after the 75th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate ~~shall~~ must be filed with the clerk and recorder on or before the 75th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day preceding the general election held during the second year of the term, the person appointed by the commissioners under ~~7-4-2206(2)~~ subsection (2) shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace ~~shall~~ must be filled as provided in Title 3, chapter 10, part 2."

1 **Section 34.** Section 7-6-2531, MCA, is amended to read:

2 **"7-6-2531. County may exceed maximum mill levy -- election required.** The governing body of a
3 county may raise money by taxation for the support of county government services, facilities, or other
4 capital projects in excess of the levy or levies allowed by law under the following conditions:

5 (1) The governing body shall pass a resolution indicating its intent to exceed the current statutory
6 mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2).
7 The resolution must include:

8 (a) the specific purpose for which the additional money will be used;

9 (b) the specific amount to be raised;

10 (c) the approximate number of mills required; and

11 (d) the specific mill levy limitation to be exceeded.

12 (2)(a) Except as provided in subsection (2)(b), the governing body shall submit the question of the
13 additional mill levy to the qualified electors of the county at the next regular primary election held in an
14 even-numbered year.

15 (b) If the purpose of the special levy designated pursuant to subsection (1)(a) is for the support
16 of a ~~hospital~~ health care facility as described in 7-6-2512, the governing body may submit the question of
17 the additional mill levy to the qualified electors of the county at a general election, at a school election held
18 pursuant to 20-3-304, or at a regular primary election held in an even-numbered year.

19 (c) If the majority voting on the question are in favor of the additional levy or levies, the governing
20 body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a
21 period not to exceed 2 years."

22
23 **Section 35.** Section 7-7-4602, MCA, is amended to read:

24 **"7-7-4602. Definitions.** As used in this part, unless the context indicates otherwise, the following
25 definitions apply:

26 (1) "Enterprise" means any work, undertaking, or project ~~which~~ that the municipality is authorized
27 to construct and from which the municipality derives ~~revenues,~~ revenue for the refinancing or the
28 refinancing and improving of which enterprise refunding bonds are issued under this part; ~~and such.~~ The
29 enterprise includes all incidental or connected improvements, betterments, extensions, ~~and~~ replacements,
30 ~~thereto and all~~ appurtenances, facilities, lands, rights in land, water rights, franchises, and structures ~~in~~

1 ~~connection therewith or incidental thereto.~~

2 ~~(2) "Federal agency" means the United States, the president of the United States, the federal~~
3 ~~emergency administrator of public works, or any agency, instrumentality, or corporation of the United~~
4 ~~States designated or created by or pursuant to any act or joint resolution of the congress of the United~~
5 ~~States or directly or indirectly owned or controlled by the United States.~~

6 ~~(3)~~(2) "Governing body" means, in the case of a city or town, the council, commission, or other
7 body, board, officer, or officers having charge of the finances ~~thereof~~ of the city or town.

8 ~~(4)~~(3) "Holder of bonds" or "bondholder" (or any similar term) means ~~any~~ a person who is the
9 bearer of any outstanding refunding bond, registered to bearer or not registered, or the registered owner
10 of any ~~such~~ outstanding bond ~~which~~ that is at the time registered other than to bearer.

11 ~~(5)~~(4) "Improving" means reconstructing, replacing, extending, repairing, bettering, equipping,
12 developing, or embellishing, ~~or improving or any one or more of the foregoing.~~

13 ~~(6)~~(5) "Law" means any act or statute (general, special, or local) of this state, including ~~without~~
14 ~~being~~ but not limited to the charter of any municipality.

15 ~~(7)~~(6) "Municipality" means any city or town of this state.

16 ~~(8)~~(7) "Refinancing" means funding, refunding, paying, or discharging, by means of refunding
17 bonds or the proceeds received from the sale ~~thereof~~ of refunding bonds, all or any part of any notes,
18 bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or
19 improving of an enterprise and payable solely from all or any part of the ~~revenues thereof~~ revenue of the
20 refunding bonds, including interest ~~thereon~~ on the refunding bonds in arrears or about to become due,
21 whether or not represented by coupons or interest certificates.

22 ~~(9)~~(8) "Refunding bonds" means notes, bonds, certificates, or other obligations of a municipality
23 issued pursuant to this part or pursuant to any other law as supplemented by or in conjunction with this
24 part.

25 ~~(10)~~(9) ~~"Revenues"~~ "Revenue" means all fees, tolls, rates, rentals, and charges to be levied and
26 collected in connection with an enterprise and all other income and receipts of whatever kind or character
27 derived by the municipality from the operation of ~~any~~ an enterprise or arising from ~~any~~ an enterprise."

28

29 **Section 36. Section 7-13-4311, MCA, is amended to read:**

30 **"7-13-4311. Authorization to furnish water and sewer services to industrial consumers. (1)**

1 Subject to the provisions of subsection (2), the city or town council of any city or town within Montana
2 that owns and operates a municipal water system, ~~and/or~~ a municipal sewage system, or both, to furnish
3 water services, ~~and/or~~ sewage services, or both, to the inhabitants of ~~such~~ the city or town as a public
4 utility ~~shall~~ may, in addition to all other powers, ~~have power to~~ furnish water from ~~such~~ the water system
5 and sewage services from ~~such~~ the sewage system:

6 (a) to any person, factory, or other industry located within the corporate limits of ~~such~~ the city or
7 town; or

8 (b) to any person, factory, or other industry located outside the corporate limits of ~~such~~ the city
9 or town.

10 (2) (a) The services authorized by subsection (1) ~~shall~~ must be furnished at reasonable rates, ~~filed~~
11 ~~by the city or town council and approved by the public service commission.~~

12 (b) Delivery of water and delivery of sewage services by ~~any such~~ a city or town to or for the use
13 of any person, factory, or other industry located outside the corporate limits of ~~such~~ the city or town ~~shall~~
14 must be made within or at the boundary line of the corporate limits of ~~such~~ the city or town or from any
15 existing waterline or sewerline of ~~such~~ the city or town located outside of the corporate limits of ~~such~~ the
16 city or town, except as ~~hereinafter~~ provided in this part."

17
18 **Section 37.** Section 7-14-4736, MCA, is amended to read:

19 **"7-14-4736. Participation by municipality.** If the municipality is willing to participate in the cost
20 of leasing, improving, operating, or maintaining the offstreet parking sites in an improvement district
21 established pursuant to 7-14-4731, the governing body may by resolution ~~summarily~~ order ~~such~~ the
22 participation, and the amount of ~~any such~~ participation ~~shall~~ is not ~~be~~ subject to the limitations of
23 7-12-4102, ~~7-12-4103~~, and 7-12-4132."

24
25 **Section 38.** Section 7-16-2105, MCA, is amended to read:

26 **"7-16-2105. Acquisition of land by county for public recreational or cultural purposes.** (1) The
27 counties of this state are authorized to acquire, by purchase, grant, deed, gift, devise, condemnation, or
28 otherwise, lands suitable for public camping, public recreational purposes, civic centers, youth centers,
29 museums, recreational centers, and any combination thereof or may lease the land tracts, each of which
30 must be situated as to offer ready access to a public highway.

(2) This section may not be construed as amending or repealing 7-16-2201 through ~~7-16-2204~~
7-16-2203."

Section 39. Section 7-16-4222, MCA, is amended to read:

"7-16-4222. Rules to implement part. (1) In addition to the powers and duties established in the ordinance creating the board of park commissioners and the provisions of 7-16-4223 and 7-16-4225 through 7-16-4228, the board of park commissioners has the following powers and duties:

(a) to make all rules necessary or convenient to protect and promote the growth of trees and plants in parks, streets, avenues, alleys, boulevards, and public places under the care and control of the board and for the protection of all birds inhabiting, frequenting, or nesting in the parks, streets, avenues, boulevards, and public places;

(b) to make all rules for the use of parks by the public; and

(c) to provide penalties for the violation of the rules.

(2) The rules authorized by this section have the force of city ordinances and may be enforced as ordinances of the city are enforced."

Section 40. Section 7-32-2244, MCA, is amended to read:

"7-32-2244. Detention of juveniles. Juveniles may be held in a detention center only in accordance with ~~41-5-301 through 41-5-307, 41-5-309, and 41-5-311~~ Title 41, chapter 5, part 3."

Section 41. Section 7-34-2201, MCA, is amended to read:

"7-34-2201. Erection and management of county health care facilities -- definition -- provision of health care services. (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health care facilities and to provide health care services in those facilities as permitted by law.

(2) The board of county commissioners of a county that has or may acquire title to a site and building or buildings suitable for county health care purposes has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, maintain, and operate the building or buildings for health care purposes as provided by this section.

(3) As used in parts 21, 23, 24, and 25 and this part, unless the context clearly requires otherwise,

the term "health care facility" means a hospital, a medical assistance facility, an ambulatory surgical facility, a hospice, ~~a kidney treatment center~~ an end-stage renal dialysis facility, an outpatient facility, a public health center, a rehabilitation facility, a long-term care facility, or an adult day-care center, as defined in 50-5-101, or any combination and related medical facilities including offices for physicians or other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care."

Section 42. Section 10-2-416, MCA, is amended to read:

"10-2-416. Pledge to continue operation and maintenance. Pursuant to 38 U.S.C. ~~641 and 5035(a)(6)~~ 8134 and 8135(a)(6), the state shall appropriate funds either from the general fund or from funds generated under 16-11-111 to the department of public health and human services for financial support necessary to provide for continued operation and maintenance of the state home for veterans in eastern Montana. The department of public health and human services may contract with a private vendor to provide for the operation of the eastern Montana veterans' home and may charge the contract vendor a rental fee for the maintenance and upkeep of the facility."

Section 43. Section 10-3-207, MCA, is amended to read:

"10-3-207. Text of compact. The interstate mutual aid compact referred to in 10-3-204 and 10-3-205 reads as follows:

INTERSTATE MUTUAL AID COMPACT

Article I

The purpose of this compact is to provide voluntary assistance among participating states in responding to any disaster or imminent disaster that overextends the ability of local and state governments to reduce, counteract, or remove the danger. Assistance may include but is not limited to rescue, fire, police, medical, communication, and transportation services and facilities to cope with problems which require use of special equipment, trained personnel, or personnel in large numbers not locally available.

Article II

Article I, section 10, of the Constitution of the United States permits a state to enter into an agreement or compact with another state, subject to the consent of congress. Congress, through enactment of 50 U.S.C. 2281(g) and 2283 (now repealed) and the executive branch, by issuance of Executive Orders No. 10186 of December 1, 1950, encourages the states to enter into emergency,

1 disaster, and civil defense mutual aid agreements or pacts.

2 Article III

3 It is agreed by participating states that the following conditions will guide implementation of the
4 compact:

5 (1) Participating states through their designated officials are authorized to request and receive
6 assistance from a participating state. Requests will be granted only if the requesting state is committed to
7 the mitigation of the emergency and other resources are not immediately available.

8 (2) Requests for assistance may be verbal or in writing. If the request is made by other than written
9 communication, it must be confirmed in writing as soon as practical after the request. A written request
10 shall provide an itemization of equipment and operators, types of expertise, and personnel or other
11 resources needed. Each request must be signed by an authorized official.

12 (3) Personnel and equipment of the aiding state made available to the requesting state shall,
13 whenever possible, remain under the control and direction of the aiding state. The activities of personnel
14 and equipment of the aiding state must be coordinated by the requesting state.

15 (4) An aiding state has the right to withdraw some or all of its personnel and equipment whenever
16 the personnel and equipment are needed by that state. Notice of intention to withdraw should be
17 communicated to the requesting state as soon as possible.

18 Article IV

19 (1) The requesting state shall reimburse the aiding state as soon as possible after the receipt by
20 the requesting state of an itemized voucher requesting reimbursement of costs.

21 (2) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving
22 such aid for any damage to, loss of, or expense incurred in the operation of any equipment used in
23 responding to a request for aid, and for the cost incurred in connection with such requests.

24 (3) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving
25 such aid for the cost of compensation and death benefits to injured officers, agents, or employees and their
26 dependents or representatives if such officers, agents, or employees sustain injuries or are killed while
27 rendering aid pursuant to this arrangement and such payments are made in the same manner and on the
28 same terms as if the injury or death were sustained within the aiding state.

29 Article V

30 (1) All privileges and immunities from liability, exemptions from law, ordinances, and rules and all

1 pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers,
2 agents, or employees when performing their respective functions within the territorial limits of their
3 respective political subdivisions apply to them to the same extent while engaged in the performance of any
4 of their functions and duties extraterritorially under the provisions of this compact.

5 (2) All privileges and immunities from liability, exemptions from law, ordinances, and rules and
6 workers' compensation and other benefits that apply to duly enrolled or registered volunteers when
7 performing their respective functions at the request of their state and within its territorial limits apply to the
8 same extent while performing their functions extraterritorially under the provisions of this compact.
9 Volunteers may include but are not limited to physicians, surgeons, nurses, dentists, structural engineers,
10 and trained search and rescue volunteers.

11 (3) The signatory states, their political subdivisions, municipal corporations, and other public
12 agencies shall hold harmless the corresponding entities and personnel thereof from the other state with
13 respect to the acts and omissions of its own agents and employees that occur while providing assistance
14 pursuant to the common plan.

15 (4) Nothing in this arrangement may be construed as repealing or impairing any existing interstate
16 mutual aid agreements.

17 (5) Upon enactment of this compact by two or more states, and annually by each January 1
18 thereafter, the participating states will exchange with each other the names of officials designated to
19 request and provide services under this arrangement. In accordance with the cooperative nature of this
20 arrangement, it is permissible and desirable for the states to exchange operational procedures to be
21 followed in requesting assistance and reimbursing expenses.

22 (6) This compact becomes effective and is binding upon the states so acting when it has been
23 enacted into law by any two states. Thereafter, this compact becomes effective and binding as to any
24 other state upon similar action by such state.

25 (7) This compact remains binding upon a party state until it enacts a law repealing the compact
26 and providing for the sending of formal written notice of withdrawal from the compact to the appropriate
27 officials of all other party states. An actual withdrawal may not take effect until the 30th consecutive day
28 after the notice has been sent. Such withdrawal does not relieve the withdrawing state from its obligations
29 assumed under this compact prior to the effective date of withdrawal."
30

1 **Section 44.** Section 10-3-501, MCA, is amended to read:

2 **"10-3-501. Policy of state.** (1) The legislature recognizes that an enemy attack upon the United
3 States is a possibility; that such an attack might be of unprecedented size and destructiveness; that a
4 considerable period of time may elapse after an enemy attack before federal operational control over the
5 management of resources can be instituted; and that federal planning and activities with respect to
6 postattack recovery and rehabilitation ~~necessarity~~ are predicated on the ability of the states and their
7 political subdivisions to prepare for and respond promptly to the problems created by an enemy attack.
8 Therefore, it is ~~hereby found and declared to be~~ necessary to confer upon the governor and upon the
9 executive heads of governing bodies of political subdivisions of this state the emergency powers provided
10 for in this part.

11 (2) It is ~~further declared to be~~ the purpose of this part and the policy of this state that all resource
12 management functions of this state be coordinated to the maximum extent with the comparable functions
13 of the federal government, of other states and localities, and of private agencies to the end that the most
14 effective preparation and use may be made of available manpower, resources, and facilities in an
15 emergency."

16
17 **Section 45.** Section 10-3-504, MCA, is amended to read:

18 **"10-3-504. Emergency resource management plan.** The plan ~~shall~~ must provide an emergency
19 organization and emergency administrative policies and procedures for the conservation, allocation,
20 distribution, and use of essential resources available to the state following a civil defense emergency such
21 as an attack upon the United States. ~~It shall be~~ The plan is supplemental to the national plan for emergency
22 preparedness adopted by the president of the United States and ~~shall become~~ becomes operative upon the
23 establishment of a civil defense emergency. To the extent that the federal government is either incapable
24 of or not prepared to conduct its emergency resources management program, the state emergency
25 resources management plan will substitute for and replace the federal program until ~~such~~ the time as that
26 the federal program becomes effective in the state."

27
28 **Section 46.** Section 10-4-101, MCA, is amended to read:

29 **"10-4-101. Definitions.** As used in this chapter, unless the context requires otherwise, the
30 following definitions apply:

(1) "Account" means the 9-1-1 emergency telecommunications account established in 10-4-301.

(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "Direct dispatch method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(4) "Emergency" means ~~any~~ an event that requires dispatch of a public or private safety agency.

(5) "Emergency services" means services provided by ~~any~~ a public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(6) "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in subsection (6)(a).

~~(7) "Local government" means any city, county, or political subdivision of the state and its agencies.~~

~~(8)~~ (7) "Minimum 9-1-1 service" means a telephone service meeting the standards established in 10-4-102 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point. "Minimum 9-1-1 services" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, for transferring the call to another point, when appropriate.

~~(9)~~ (8) A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

~~(10)~~ (9) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

~~(11)~~ (10) "Provider" means a public utility, cooperative telephone company, or any other entity that provides telephone exchange access services.

~~(12)~~ (11) "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in

whole or in part within this state that provides or has authority to provide emergency services.

~~(13)~~(12) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and ~~which~~ that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

~~(14)~~(13) "Relay ~~method~~" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays ~~such~~ the information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

~~(15)~~(14) "Subscriber" means an end user who receives telephone exchange access services.

~~(16)~~(15) "Transfer ~~method~~" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers ~~such a~~ the request to an appropriate public safety answering agency or other provider of emergency services."

Section 47. Section 10-4-301, MCA, is amended to read:

"10-4-301. Establishment of emergency telecommunications account. A 9-1-1 emergency telecommunications account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the account. After payment of refunds pursuant to 10-4-205, the balance of the account must be used for the purposes described in part 1 of this chapter. The distribution of the 9-1-1 emergency telecommunications account, according to the requirements of 10-4-302, is statutorily appropriated as provided in 17-7-502. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose."

Section 48. Section 13-13-276, MCA, is amended to read:

"13-13-276. Legislative findings and purpose. The legislature finds that the increased use of facsimile transmissions has encouraged the possibility of absentee voter registration and the sending and receiving of absentee ballots by facsimile. The legislature also finds that while federal law encourages but does not require the use of facsimile transmissions in federal elections, there ~~are~~ is sufficient reliability in

1 facsimile technology and there is sufficient evidence that absentee facsimile voting would be of benefit to
2 electors in the United States service, to provide for absentee registration and voting by facsimile. It is the
3 purpose of 13-13-276 through ~~13-13-279~~ 13-13-278 to allow for absentee voter registration and voting
4 by facsimile, while recognizing that state and local election officials have the responsibility to maintain the
5 accuracy, integrity, and secrecy of the election process and the individual election ballot. It is the purpose
6 of the legislature to allow facsimile voting for electors in the United States service but to continue to ensure
7 that voting security is maintained for the ultimate purpose of preventing election fraud and maintaining the
8 validity of the election process."

9
10 **Section 49.** Section 13-13-278, MCA, is amended to read:

11 **"13-13-278. Adoption of rules -- acceptance of funds.** (1) The secretary of state shall adopt
12 reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement
13 13-13-277. The rules are binding upon election administrators. The rules must require compliance with the
14 same time requirements or deadlines as for registration and voting by absentee ballot by use of the public
15 mails, except that the rules may provide for different times for the acceptance of facsimile ballots after the
16 closing of the polls. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and
17 must allow registration and voting by facsimile through use of a private corporation or other private entity
18 for transmission of facsimile messages only if the secretary of state finds that the use is essential to the
19 purposes of 13-13-276 through ~~13-13-279~~ 13-13-278.

20 (2) The secretary of state may apply for and receive a grant of funds from any agency or office
21 of the United States government or from any other public or private source and may use the money for the
22 purpose of implementing 13-13-276 through ~~13-13-279~~ 13-13-278."

23
24 **Section 50.** Section 13-25-106, MCA, is amended to read:

25 **"13-25-106. Compensation of electors.** Electors ~~shall~~ must receive the same pay and mileage that
26 is allowed to members of the legislature. Payments ~~shall~~ must be certified by the secretary of state and paid
27 by the state ~~auditor~~ treasurer from the state general fund."

28
29 **Section 51.** Section 13-27-202, MCA, is amended to read:

30 **"13-27-202. Recommendations -- approval of form required.** (1) Before submission of a sample

1 sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

2 (a) The text of the proposed measure must be submitted to the legislative services division for
3 review.

4 (b) The legislative services division staff shall review the text for clarity, consistency, and any other
5 factors that the ~~council~~ staff considers when drafting proposed legislation.

6 (c) Within 14 days after submission of the text, the legislative services division staff shall make
7 to the person submitting the text written recommendations for changes in the text or a statement that no
8 changes are recommended.

9 (d) The person submitting the text shall consider the recommendations and respond in writing to
10 the legislative services division, accepting, rejecting, or modifying each of the recommended changes. If
11 no changes are recommended, no response is required.

12 (2) The legislative services division shall furnish a copy of the correspondence provided for in
13 subsection (1) to the secretary of state, who shall make a copy of the correspondence available to any
14 person upon request.

15 (3) Before a petition may be circulated for signatures, a sample sheet containing the text of the
16 proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The
17 sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for
18 filing the signed petition with the secretary of state. The secretary of state shall refer a copy of the petition
19 sheet to the attorney general for approval. The secretary of state and attorney general shall each review
20 the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons
21 for rejection, if any. The secretary of state or the attorney general may not reject the petition solely because
22 the text contains material not submitted to the legislative services division unless the material not submitted
23 to the legislative services division is a substantive change not suggested by the legislative services division.

24 (4) The secretary of state shall review the comments and statements of the attorney general
25 received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the form of the
26 petition. The secretary of state shall send written notice to the person who submitted the petition sheet
27 of the approval or rejection within 28 days after submission of the petition sheet. If the petition is rejected,
28 the notice must include reasons for rejection.

29 (5) A petition with technical defects in form may be approved with the condition that those defects
30 will be corrected before the petition is circulated for signatures.

(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated in the form of the sample prepared by the secretary of state."

Section 52. Section 13-37-106, MCA, is amended to read:

"13-37-106. Salary. The commissioner of political practices is entitled to receive a an annual salary of ~~\$30,303 in fiscal year 1992 and \$31,551 in fiscal year 1993 and thereafter.~~"

Section 53. Section 13-37-128, MCA, is amended to read:

"13-37-128. Cause of action created. (1) ~~Except as provided in 13-37-306, any~~ A person who intentionally or negligently violates any of the reporting provisions of this chapter, ~~shall be~~ is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) ~~Any~~ A person who makes or receives a contribution or expenditure in violation of 13-35-225, 13-35-227, 13-35-228, or this chapter is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contribution or expenditure, whichever is greater."

Section 54. Section 13-37-130, MCA, is amended to read:

"13-37-130. Limitation of action. ~~No~~ An action may not be brought under 13-37-128 and 13-37-129 more than 4 years after the occurrence of the facts ~~which~~ that give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and 13-37-129 ~~shall be~~ is the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter, ~~except as provided in 13-37-306.~~ These provisions are not subject to the misdemeanor penalties of 13-35-103 but may be a ground for contest of election or removal from office as provided in 13-35-106(3) and Title 13, chapter 36."

Section 55. Section 15-1-521, MCA, is amended to read:

1 **"15-1-521. Property valuation improvement fund.** There is an account in the state special revenue
2 fund to be used by the department for increasing the efficiency of the property appraisal, assessment, and
3 taxation process through improvements in technology and administration. The department shall deposit fees
4 collected pursuant to 2-6-110~~(4)~~(3) in the account."

5
6 **Section 56.** Section 15-1-704, MCA, is amended to read:

7 **"15-1-704. Filing with district court.** (1) After issuing a warrant, the department may file the
8 warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the
9 name of the taxpayer listed as the judgment debtor.

10 (2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized
11 to collect the tax.

12 (3) A judgment lien filed pursuant to this section may be renewed for another 10-year period
13 pursuant to the ~~provisions of~~ methods provided in 25-13-102."

14
15 **Section 57.** Section 15-7-303, MCA, is amended to read:

16 **"15-7-303. Definitions.** As used in this part, the following definitions apply:

17 ~~(1) "Partial interest" means a percentage interest in property when less than 100%.~~

18 ~~(2)~~(1) "Person" means ~~and includes~~ an individual, corporation, partnership, or other business
19 organization, trust, fiduciary, or agent or any other party presenting a document for recordation.

20 ~~(3)~~(2) "Real estate" includes:

21 (a) land;

22 (b) growing timber;

23 (c) buildings, structures, fixtures, fences, and improvements affixed to land.

24 ~~(4)~~(3) "Transfer" means an act of the parties or of the law by which the title to real property is
25 conveyed from one person to another.

26 ~~(6)~~(4) "Value" means the amount of the full actual consideration ~~therefor~~ for real estate paid or to
27 be paid, including the amount of any lien or liens ~~thereon~~ on the real estate."

28
29 **Section 58.** Section 15-8-104, MCA, is amended to read:

30 **"15-8-104. Department audit and review of taxable value -- costs paid by department.** (1) When

in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells and all other types of property subject to ad valorem taxation.

(2) The department may conduct reviews of the assessment of all commercial personal property to ensure that the value of the property in those classes reflects market value. Because the assessed value of commercial personal property is defined as market value under 15-8-111(2), the review conducted by the department may be directed toward ensuring that all taxable personal property is reported to the department.

(3) The cost of any audit or review performed under subsection (1) or (2) must be paid by the department."

Section 59. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment -- penalty for delinquency. ~~Except as provided in 15-16-802 and 15-16-803 and unless~~ Unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the delinquency until paid, and 2% must be added to the delinquent taxes as a penalty.

(4) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(5) A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more

1 full taxable years, provided that taxes for both halves of the current tax year have been paid. Payment of
2 taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment
3 of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

4 (6) The penalty and interest on delinquent assessment payments for specific parcels of land may
5 be waived by resolution of the city council. A copy of the resolution must be certified to the county
6 treasurer."

7
8 **Section 60.** Section 15-16-119, MCA, is amended to read:

9 **"15-16-119. Taxation of personal property -- duty of department -- collection by state auditor.**

10 (1) If the taxes on personal property are not a lien upon real property in the same county in an amount
11 sufficient to secure the payment of the taxes, the department shall assess the property and compute the
12 tax for the assessment. The department shall notify the county treasurer of the assessment and the amount
13 of taxes due. To compute the taxes due on the personal property, the department shall use the appropriate
14 mills levied during the previous year.

15 (2) The county treasurer shall notify the person against whom the tax is assessed and any other
16 person having a properly perfected security interest of record of the amount and due date of the tax. The
17 tax is due and payable 30 days from the date the treasurer mails the notice. Taxes not paid within 30 days
18 become delinquent, and the penalty and interest provisions of 15-16-101 must be applied.

19 (3) The county treasurer shall, after the tax becomes delinquent, either proceed under subsection
20 (7) or levy upon and take into possession the personal property against which a tax is assessed or any
21 other personal property in the hands of the delinquent taxpayer. The county treasurer may proceed to sell
22 the property in the same manner as property is sold on execution by the sheriff.

23 (4) The county treasurer shall, for the purpose of making the levy and sale, direct the sheriff to
24 make the levy and sale. The sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy
25 county treasurer for sale purposes and may receive payment of the taxes, penalty, and interest. The sheriff
26 may receive the same fees as for making a seizure and sale as provided in 15-17-911.

27 (5) The county treasurer and the treasurer's sureties are liable on the treasurer's official bond for
28 all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the
29 treasurer to levy upon and sell the personal property for the taxes levied upon the property, including
30 penalty and interest.

(6) Failure by the sheriff, undersheriff, or deputy sheriff acting as a deputy county treasurer to make the levy and sale results in a levy against the official bond of the sheriff, undersheriff, or deputy sheriff for payment of the delinquent tax, including penalty and interest.

(7) The county treasurer shall give the board of county commissioners a list of delinquent personal property taxpayers and the taxes due. The board may order the county treasurer to verify the list under oath and to send a copy of the list to the ~~state auditor~~ department of administration for collection under Title 17, chapter 4, part 1.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 61. Section 15-23-101, MCA, is amended to read:

"15-23-101. Properties centrally assessed. The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(3) all property of scheduled airlines;

(4) the net proceeds of mines ~~and of oil and gas wells;~~

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) ~~which~~ that is subject to the provisions of Title 15, chapter 24, part 12."

Section 62. Section 15-23-703, MCA, is amended to read:

"15-23-703. Taxation of gross proceeds -- taxable value for bonding and guaranteed tax base aid

1 to schools. (1) The department shall compute from the reported gross proceeds from coal a tax roll that
2 must be transmitted to the county treasurer on or before September 15 each year. The department may
3 not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against
4 the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed
5 to give full notice as provided in 15-16-101 to each coal producer of the taxes due and ~~to~~ shall collect the
6 taxes ~~as provided in 15-16-101~~.

7 (2) For bonding, county classification, and all nontax purposes, the taxable value of the gross
8 proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

9 (3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the
10 state, county, and eligible school districts in the county the amount of the coal gross proceeds tax,
11 determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated,
12 and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

13 (4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount
14 determined under subsection (3) and the amounts received under 15-23-706:

15 (a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production
16 in the relative proportions required by the levies for state and county purposes in the same manner as
17 property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

18 (b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988
19 production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against
20 production, in the same manner that property taxes collected or property taxes that would have been
21 collected would have been distributed in the 1990 school fiscal year in the school district.

22 (5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection
23 (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each
24 year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department
25 for redistribution as provided in 15-23-706.

26 (b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection
27 (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

28 (6) The board of county commissioners of a county may direct the county treasurer to reallocate
29 the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in
30 subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school,

within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year. (In subsection (2), the deletion of the reference to subsection (5) of 15-35-102 terminates December 31, 2005--sec. 5, Ch. 318, L. 1995.)"

Section 63. Section 15-23-706, MCA, is amended to read:

"15-23-706. Department to determine redistribution of coal gross proceeds to taxing jurisdictions.

(1) The coal gross proceeds redistribution account established in 15-23-707 is statutorily appropriated, as provided in 17-7-502, for allocation to the county for redistribution as provided in subsections (2) and (3).

(2) Each year the department shall determine the amount of tax collected under this part from within each taxing unit in the county. If the amount collected by each county is less than the amount determined under 15-23-703~~(4)~~(3) for that county, the department shall, on or before June 30 of each year, send the amount of the difference from the state special revenue account established in 15-23-707 to the county treasurer for redistribution as provided in 15-23-703~~(5)~~(4).

(3) If the amount received by the department for redistribution is less than or more than the redistribution amount determined in subsection (2), the department shall calculate and redistribute the

1 shortage or excess amount in the following manner:

2 (a) If a county does not receive the entire amount to which it is entitled under subsection (2), the
3 shortage amounts of each taxing unit must be divided by the total shortage amounts of all taxing units
4 determined under 15-23-703~~(4)~~(3) to obtain a shortage percentage for each taxing unit. The shortage
5 percentage for each taxing unit must be multiplied by the amount that is available for redistribution to each
6 taxing unit, and this amount must be redistributed to each respective taxing unit.

7 (b) If there are excess amounts after the redistribution provided for in subsection (2), the excess
8 amounts must be redistributed to the county of origin in proportion to the amount each taxing unit in the
9 county contributed for redistribution.

10 (4) The county treasurer shall distribute the money received under subsection (3)(b) of this section
11 as provided in 15-23-703~~(6)~~(4)."

12
13 **Section 64.** Section 15-23-707, MCA, is amended to read:

14 **"15-23-707. Coal gross proceeds redistribution account.** (1) There is within the state special
15 revenue fund a coal gross proceeds redistribution account.

16 (2) All money received from county treasurers as provided in 15-23-703~~(6)~~(a)(5)(a) must be
17 deposited by the department into the coal gross proceeds redistribution account for redistribution as
18 provided in 15-23-706."

19
20 **Section 65.** Section 15-30-101, MCA, is amended to read:

21 **"15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context,
22 the following definitions apply:

23 (1) "Base year structure" means the following elements of the income tax structure:

24 (a) the tax brackets established in 15-30-103, but unadjusted by ~~subsection (2) of 15-30-103~~(2),
25 in effect on June 30 of the taxable year;

26 (b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30
27 of the taxable year;

28 (c) the maximum standard deduction provided in 15-30-122, but unadjusted by ~~subsection (2) of~~
29 15-30-122(2), in effect on June 30 of the taxable year.

30 (2) "Consumer price index" means the consumer price index, United States city average, for all

1 items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department
2 of labor.

3 (3) "Department" means the department of revenue.

4 (4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its
5 shareholders or members, whether in cash or in other property or in stock of the corporation, other than
6 stock dividends.

7 (5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any
8 person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

9 (6) ~~"Foreign country" or "foreign"~~ "Foreign government" means any jurisdiction other than the one
10 embraced within the United States, its territories, and its possessions.

11 (7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined
12 in section 61 of the Internal Revenue Code of 1954 (26 U.S.C. 61) or as that section may be labeled or
13 amended, excluding unemployment compensation included in federal gross income under the provisions
14 of section 85 of the Internal Revenue Code of 1954 (26 U.S.C. 85) as amended.

15 (8) "Inflation factor" means a number determined for each taxable year by dividing the consumer
16 price index for June of the taxable year by the consumer price index for June 1980.

17 (9) "Information agents" includes all individuals, corporations, associations, and partnerships,
18 acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries,
19 brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal
20 corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment
21 of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other
22 fixed or determinable annual or periodical gains, profits, and income with respect to which any person or
23 fiduciary is taxable under this chapter.

24 (10) "Knowingly" is as defined in 45-2-101.

25 (11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by
26 this chapter.

27 (12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or
28 accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed
29 according to the method of accounting upon the basis of which the taxable income is computed under this
30 chapter.

1 (13) "Pension and annuity income" means:

2 (a) systematic payments of a definitely determinable amount from a qualified pension plan, as that
3 term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received
4 as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's
5 beneficiary upon the cessation of employment;

6 (b) payments received as the result of past service and cessation of employment in the uniformed
7 services of the United States;

8 (c) lump-sum distributions from pension or ~~profit-sharing~~ profit-sharing plans to the extent that the
9 distributions are included in federal adjusted gross income;

10 (d) distributions from individual retirement, deferred compensation, and self-employed retirement
11 plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through
12 408) to the extent that the distributions are not considered to be premature distributions for federal income
13 tax purposes; or

14 (e) amounts received from fully matured, privately purchased annuity contracts after cessation of
15 regular employment.

16 (14) "Purposely" is as defined in 45-2-101.

17 (15) "Received", for the purpose of computation of taxable income under this chapter, means
18 received or accrued, and the term "received or accrued" must be construed according to the method of
19 accounting upon the basis of which the taxable income is computed under this chapter.

20 (16) "Resident" applies only to natural persons and includes, for the purpose of determining liability
21 to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled
22 in the state of Montana and any other person who maintains a permanent place of abode within the state
23 even though temporarily absent from the state and who has not established a residence elsewhere.

24 (17) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders
25 in proportion to their previous holdings.

26 (18) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and
27 exemptions provided for in this chapter.

28 (19) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax
29 purposes.

30 (20) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed

1 by this chapter and does not include corporations."

2
3 **Section 66.** Section 15-30-111, MCA, is amended to read:

4 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income
5 tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 (26 U.S.C. 62),
6 as that section may be labeled or amended, and in addition includes the following:

7 (a) (i) interest received on obligations of another state or territory or county, municipality, district,
8 or other political subdivision of another state, except to the extent that the interest is exempt from taxation
9 by Montana under federal law;

10 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986
11 (26 U.S.C. 852(b)(5)), as that section may be amended or renumbered, that are attributable to the interest
12 referred to in subsection (1)(a)(i);

13 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in
14 a reduction of Montana income tax liability;

15 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue
16 Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the
17 income;

18 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15); and

19 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that
20 the amount recovered reduced the taxpayer's Montana income tax in the year deducted.

21 (2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or
22 amended, adjusted gross income does not include the following, which are exempt from taxation under this
23 chapter:

24 (a) (i) all interest income from obligations of the United States government, the state of Montana,
25 county, municipality, district, or other political subdivision of the state and any other interest income that
26 is exempt from taxation by Montana under federal law;

27 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986
28 (26 U.S.C. 852(b)(5)), as that section may be amended or renumbered, that are attributable to the interest
29 referred to in subsection (2)(a)(i);

30 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and

1 including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

2 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
3 received as defined in 15-30-101;

4 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

5 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
6 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income
7 in excess of \$30,000 as shown on the taxpayer's return;

8 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
9 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided
10 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of
11 \$30,000 as shown on their joint return;

12 (d) all Montana income tax refunds or tax refund credits;

13 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

14 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by
15 section 3401 of the Internal Revenue Code of 1954 (26 U.S.C. 3402(k) or 3401), as amended and
16 applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises
17 licensed to provide food, beverage, or lodging;

18 (g) all benefits received under the workers' compensation laws;

19 (h) all health insurance premiums paid by an employer for an employee if attributed as income to
20 the employee under federal law;

21 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against
22 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

23 (j) principal and income in a medical care savings account established in accordance with
24 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the
25 taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the
26 taxpayer; and

27 (k) the recovery during the tax year of any amount deducted in any prior tax year to the extent that
28 the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted.

29 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)
30 shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same

(10) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(11) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(12) A person or entity may not hold an ownership interest in more than one agency liquor store.

(13) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."

Section 90. Section 16-2-103, MCA, is amended to read:

"16-2-103. Duplicate invoices of sales required. (1) ~~The state~~ An agency liquor store shall, upon each sale of liquor or table wine to any licensee, issue a duplicate invoice of the liquor or table wine purchased, as provided by the department, a copy of which ~~shall~~ must be delivered to the licensee and one copy retained at ~~such~~ the store.

(2) The invoice ~~shall~~ must show the date of purchase, the name of the employee making the sale, the quantity of each kind of liquor or table wine purchased, the price paid ~~therefor~~ for the liquor or table wine, the name of the licensee, and the number of the license, with ~~such~~ any other information ~~as that~~ as may be required by the department.

(3) The licensee shall keep and retain ~~his~~ the duplicate invoice of all purchases made ~~by him~~ from ~~the state~~ an agency liquor store, which ~~shall~~ must at all times be subject to inspection by the duly authorized officers, agents, and employees of the department."

Section 91. Section 16-3-220, MCA, is amended to read:

"16-3-220. Wholesalers' service obligations -- applicability. (1) A wholesaler appointed to distribute a brand of beer within a territory specified by agreement pursuant to ~~16-3-221(3)~~ 16-3-222 shall call on and offer that brand to at least 75% of the retailers within that territory at least every 3 weeks. However, if the brand of beer for which the wholesaler is appointed is a product of a brewer or beer

1 importer whose products are not generally available, the wholesaler shall, at least every 3 weeks, call on
2 and offer that brand to as many retailers within that territory as is reasonably possible given the amount
3 of that brand that is available to the wholesaler.

4 (2) If a retailer's account with a wholesaler is current as required under 16-3-243, the wholesaler
5 may not refuse to sell the retailer any generally available brand of beer for which the wholesaler has been
6 appointed for the territory in which the retailer is located. The wholesaler shall offer to deliver the beer to
7 the retailer at least every 3 weeks.

8 (3) For the purposes of this section, a brewer or beer importer's products are not generally available
9 if:

10 (a) all of the brands of a brewer or beer importer shipped to a wholesaler during the most recent
11 calendar quarter total less than 600 barrels;

12 (b) all of the brands of a brewer or beer importer shipped into the state total less than 1,200 barrels
13 in each of the 2 consecutive preceding calendar quarters; and

14 (c) all of the brands produced by the brewer at all of its facilities total less than 150,000 barrels
15 per year.

16 (4) This section applies to all beer distribution agreements entered into, assigned, or amended after
17 July 1, 1986. It does not apply to a distribution agreement for a named brand entered into before July 1,
18 1986, but does not prohibit a brewer who is a party to an agreement from requiring the appointed
19 wholesaler to fulfill similar service obligations in the territory."
20

21 **Section 92.** Section 16-6-106, MCA, is amended to read:

22 **"16-6-106. When force may be used in seizure of alcoholic beverages -- forfeiture -- hearing. (1)**

23 If an alcoholic beverage is found by a department of justice investigator or a peace officer in any place in
24 quantities that satisfy the investigator or peace officer that the alcoholic beverage is being kept contrary
25 to this code, the investigator or peace officer may seize and remove, by force if necessary, any alcoholic
26 beverage found and the packages in which the alcoholic beverage was kept and immediately turn the
27 alcoholic beverage over to the department.

28 (2) The department shall determine if the seized alcoholic beverage is suitable for resale in ~~a state~~
29 an agency liquor store. If the department has determined that the seized alcoholic beverage is suitable for
30 resale, the department shall commence an administrative action against the owner of the alcoholic

1 beverage. All seized alcoholic beverages found to be unsuitable for sale in ~~a state~~ an agency liquor store
2 must be destroyed by the department.

3 (3) A notice and opportunity for hearing must be given in accordance with the Montana
4 Administrative Procedure Act, except that the notice must be published in the county where the alcoholic
5 beverage was seized if a newspaper is published in the county.

6 (4) The notice must show the date and place of seizure, the name of the person or persons actually
7 or apparently in possession or control of the alcoholic beverage if the person was present at the time of
8 the seizure, and the reasons the department claims the right to the possession of the alcoholic beverage.
9 The notice must also demand that all persons who claim any right to the possession of the alcoholic
10 beverage show the nature of their claim or claims, that the hearing examiner declare the alcoholic beverage
11 contraband, and that the hearing examiner order that the alcoholic beverage be forfeited to the state."
12

13 **Section 93.** Section 17-2-107, MCA, is amended to read:

14 **"17-2-107. Accurate accounting records and interentity loans.** (1) The department of
15 administration shall record receipts and disbursements for treasury funds and for accounting entities within
16 treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance
17 of each fund and each accounting entity. The department of administration shall adopt the necessary
18 procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result
19 in inflation of figures reflecting total governmental costs and revenue.

20 (2) (a) When the expenditure of an appropriation from a fund designated in 17-2-102(1)(a) through
21 (1)(c) is necessary and the cash balance in the accounting entity from which the appropriation was made
22 is insufficient, the department of administration may authorize a temporary loan, bearing no interest, of
23 unrestricted money from other accounting entities if there is reasonable evidence that the income will be
24 sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting
25 records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not
26 be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

27 (b) (i) When an expenditure from a fund or subfund designated in 17-2-102(1)(d) ~~(i)(A) through~~
28 ~~(1)(d)(vi)~~ is necessary and the cash balance in the fund or subfund from which the expenditure is to be
29 made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest
30 as provided in subsection (4), of money from the agency's other funds or subfunds if there is reasonable

1 evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is
2 recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made
3 may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is
4 extended.

5 (ii) One accounting entity within each fund or subfund designated in 17-2-102(1)(d)(i)(A) through
6 ~~(1)(d)(vi)~~ must be established for the sole purpose of recording loans between the funds or subfunds. This
7 accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from
8 which a loan may be made.

9 (c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date
10 on which the loan is approved unless it is extended under subsection (3) or by specific legislative
11 authorization.

12 (3) Under unusual circumstances, the director of the department of administration or the board of
13 regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The
14 director or board shall prepare a written justification and proposed repayment plan for each loan extension
15 authorized and shall furnish a copy of the written justification and proposed repayment plan to the house
16 appropriations and senate finance and claims committees at the next legislative session.

17 (4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(1)(d)(i)(D) and
18 (1)(d)(ii) through (1)(d)(vi) must bear interest at a rate equivalent to the previous fiscal year's average rate
19 of return on the board of investments' short-term investment pool. Except for investment earnings on
20 restricted donations, all designated and restricted subfund investment earnings, other than investment
21 earnings on student activity fees used to support student governments at units of the university system,
22 are credited to the state general fund.

23 (5) If for 2 consecutive fiscal years a loan or an extension of a loan has been authorized to the
24 same accounting entity as provided in subsection (2) or (3), the department of administration or the
25 commissioner of higher education shall submit to the legislative finance committee by September 1 of the
26 following fiscal year a written report containing an explanation as to why the second loan or extension was
27 made, an analysis of the solvency of the accounting entity or accounting entities within the university fund
28 or subfund, and a plan for repaying the loans.

29 (6) If for 2 consecutive fiscal years an accounting entity in a fund or subfund designated in
30 17-2-102(1)(d)(i) through ~~(1)(d)(vi)~~ has a negative cash balance, the commissioner of higher education shall

submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.

(7) (a) An accounting entity in a fund designated in 17-2-102(1)(a) through (1)(c) may not have a negative cash balance at fiscal yearend. The department of administration may, however, allow an accounting entity to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii), a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(iii) through (1)(d)(vi).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department of administration may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department of administration may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed upon reimbursements from federal, private, or other governmental entity sources for disbursements made. The department of administration may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions ~~as~~ that may be determined by the department of administration or by specific legislative authorization."

Section 94. Section 17-3-221, MCA, is amended to read:

"17-3-221. State treasurer to be custodian of ~~moneys~~ money received under Taylor Grazing Act.

The state treasurer ~~shall be~~ is the custodian of all ~~moneys~~ money that the treasurer of the United States ~~may transfer~~ transfers to the state of Montana under the terms of section 10 of the Taylor Grazing Act, 43 U.S.C. 315i, ~~approved June 28, 1934, (Public No. 482), which provides that the secretary of the United States treasury pay one-half of the moneys received from each grazing district each year to the state where~~

1 ~~collected~~, to be expended as the legislature may prescribe."

2
3 **Section 95.** Section 17-5-202, MCA, is amended to read:

4 "17-5-202. **Definitions.** ~~The following terms, wherever used or referred to in this part, have the~~
5 ~~following meanings~~ As used in this part, the following definitions apply:

6 (1) "Bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary
7 bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing
8 or representing indebtedness or evidencing or representing the borrowing of money or evidencing or
9 representing a charge, lien, or encumbrance on specific revenues, income, or property of a public body,
10 including all instruments or obligations payable from a special fund.

11 (2) "Public body" includes a county, city, town, school district, irrigation district, drainage district,
12 special improvement district, or any other political or governmental subdivision of the state or any
13 commission, authority, or agency of a political or governmental subdivision, and also includes the board
14 of public education, the board of regents of higher education, the board of examiners, the ~~board~~ department
15 of natural resources and conservation, the state transportation commission, or any other governmental
16 agency of this state."

17
18 **Section 96.** Section 17-6-103, MCA, is amended to read:

19 "17-6-103. **Security for deposits of public funds.** The following kinds of securities may be pledged
20 or guarantees may be issued to secure deposits of public funds:

21 (1) direct obligations of the United States;

22 (2) securities as to which the payment of principal and interest is guaranteed by the United States;

23 (3) securities issued or fully guaranteed by the following agencies of the United States or their
24 successors, whether or not guaranteed by the United States:

25 (a) commodity credit corporation;

26 (b) federal intermediate credit banks;

27 (c) federal land bank;

28 (d) bank for cooperatives;

29 (e) federal home loan banks;

30 (f) federal national mortgage association;

1 (g) government national mortgage association;

2 (h) small business administration;

3 (i) federal housing administration; and

4 (j) federal home loan mortgage corporation;

5 (4) securities of or other interests in an open-end or closed-end management type investment
6 company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1
7 through 80a-64), as amended, if:

8 (a) the portfolio of the investment company or investment trust is limited to United States
9 government obligations and repurchase agreements fully collateralized by United States government
10 obligations; and

11 (b) the investment company or investment trust takes delivery of the collateral for any repurchase
12 agreement, either directly or through an authorized custodian;

13 (5) general obligation bonds of the state or of any county, city, school district, or other political
14 subdivision of the state;

15 (6) revenue bonds of any county, city, or other political subdivision of the state, when backed by
16 the full faith and credit of the subdivision or when the revenue pledged to the payment of the bonds is
17 derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and
18 charges for the system in an amount sufficient to produce revenue equal to at least 125% of the average
19 annual principal and interest due on all bonds payable from the revenue during the outstanding term of the
20 bonds;

21 (7) interest-bearing warrants of the state or of any county, city, school district, or other political
22 subdivision of the state issued in evidence of claims in an amount that, with all other claims on the same
23 fund, does not exceed the amount validly appropriated in the current budget for expenditure from the fund
24 in the year in which they are issued;

25 (8) obligations of housing authorities of the state secured by a pledge of annual contributions or
26 by a loan agreement made by the United States or any agency of the United States providing for
27 contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the
28 obligations when due. The bonds and other obligations made eligible for investment in 7-15-4505 and
29 32-1-424(2)(a)(1)(a) may be used as security for all deposits of public funds or obligations for which
30 depository bonds or any kind of bonds or other securities are required or may by law be deposited as

1 security.

2 (9) general obligation bonds of other states and of municipalities, counties, and school districts of
3 other states;

4 (10) undertaking or guarantees issued by a surety company authorized to do business in the state;

5 (11) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis,
6 certify to the state treasurer that sufficient first mortgages and trust indentures on real property are
7 available and segregated to secure deposits of public funds. The board of investments shall determine the
8 amount of security required.

9 (12) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

10 (13) bonds issued pursuant to Title 90, chapter 6, part 1;

11 (14) revenue bonds issued by any unit of the university system of the state of Montana; and

12 (15) advance refunded bonds secured by direct obligations of the United States treasury held in
13 irrevocable escrow."

14
15 **Section 97.** Section 17-6-212, MCA, is amended to read:

16 **"17-6-212. State purchase of general fund warrants.** (1) The state reserves a preference right,
17 prior to the right of any person, company, or corporation, to purchase state general fund warrants issued
18 with funds under the control of the board of investments and subject to investment.

19 (2) When the board of investments has under its control any funds subject to investment that in
20 its judgment it would be advantageous to invest in state general fund warrants and there are not sufficient
21 funds in the state general fund to pay warrants issued against the fund at the time that they are issued and
22 presented for payment, it shall authorize and direct the state treasurer to purchase state general fund
23 warrants, designating the fund or funds to be invested and fixing the amount or amounts to be invested.
24 State general fund warrants registered by the state treasurer pursuant to 17-8-304(1) and purchased by
25 the board of investments must bear interest at a rate determined by the board. When determining the
26 interest rate, the board shall consider:

27 (a) the duration of the investment by estimating the time at which the warrants will be redeemed
28 pursuant to 17-8-304(1); and

29 (b) the interest rate of the investments liquidated to provide the funds to purchase the warrants.

30 (3) The state treasurer shall attach to or stamp, write, or print upon each general fund warrant

1 issued after the receipt of notice, until warrants totaling the amounts designated have been issued, a notice
2 that the state will exercise its preference right to purchase the warrant.

3 (4) The state treasurer shall, when the marked warrant is presented, pay it out of the proper fund
4 as designated by the board, and the warrant purchased must be registered as other state warrants and
5 must bear interest as provided by law.

6 (5) When the designated amounts have been invested, the state treasurer shall notify the board
7 of investments, which shall issue orders upon the proper funds addressed to the state ~~auditor~~ treasurer for
8 warrants to be issued in favor of the treasurer."

9
10 **Section 98.** Section 17-7-502, MCA, is amended to read:

11 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
12 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
13 without the need for a biennial legislative appropriation or budget amendment.

14 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
15 with both of the following provisions:

16 (a) The law containing the statutory authority must be listed in subsection (3).

17 (b) The law or portion of the law making a statutory appropriation must specifically state that a
18 statutory appropriation is made as provided in this section.

19 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
20 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
21 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
22 16-11-308; 17-3-106; 17-3-212; 17-5-404; ~~17-5-424~~; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
23 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
24 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
25 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
26 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
27 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
28 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301;
29 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

30 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,

1 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
2 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
3 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
4 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
5 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
6 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
7 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
8 July 1, 2001.)"

9
10 **Section 99.** Section 17-8-101, MCA, is amended to read:

11 **"17-8-101. Appropriation and disbursement of money from treasury.** (1) ~~Except as provided in~~
12 ~~subsection (5), money~~ Money deposited in the general fund, the special revenue fund type (except money
13 deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an
14 agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the
15 exception of refunds authorized in subsection (3), must be paid out of the treasury only on appropriation
16 made by law.

17 (2) ~~Money~~ Subject to the provisions of subsection (8), money deposited in the enterprise fund type,
18 internal service fund type, debt service fund type, expendable trust fund type, nonexpendable trust fund
19 type, pension trust fund type, state special revenue fund from nonstate and nonfederal sources restricted
20 by law or by the terms of an agreement, such as a contract, trust agreement, or donation, and agency fund
21 type may be paid out of the treasury under general laws, or contracts entered into in pursuance of law,
22 permitting the disbursement.

23 (3) ~~Subject to the provisions of subsection (8), money~~ Money paid into the state treasury through
24 error or under circumstances, such that the state is not legally entitled to retain it and a refund procedure
25 is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by
26 the department of administration.

27 (4) Authority to expend appropriated money may be transferred from one state agency to another,
28 provided that the original purpose of the appropriation is maintained. The office of budget and program
29 planning shall report semiannually to the legislative finance committee concerning all appropriations
30 transferred under the provisions of this section.

(5) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

(6) The office of budget and program planning shall include in the budget submitted to the legislature a report on:

(a) enterprise funds, including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(b) internal service fund type fees and charges, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Internal service fund type fees and charges must be approved by the legislature in the general appropriations act. Fees and charges in any biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

(7) Any accounts created in the enterprise fund or the internal service fund ~~created after July 1, 1995,~~ must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and otherwise requires an appropriation."

Section 100. Section 18-1-103, MCA, is amended to read:

"18-1-103. Resident defined. (1) For the purpose of 18-1-102, ~~18-1-103, and~~ 18-1-111, and this section, the word "resident" ~~shall include~~ includes actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise or an association, the majority of all partners or association members ~~shall~~ must have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed ~~where~~ when it

1 is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility
2 for the execution of ~~such~~ the contract that ~~said~~ the corporation is a wholly owned subsidiary of a foreign
3 corporation or that ~~said~~ the corporation was formed for the purpose of circumventing the provisions relating
4 to residence.

5 (4) Notwithstanding the foregoing, any bidder on a contract for the purchase of goods, whether
6 an individual, partnership, or corporation, foreign or domestic and regardless of ownership thereof, whose
7 offered goods are Montana-made is a resident for the purpose of 18-1-102, ~~18-1-103, and 18-1-111, and~~
8 this section."

9
10 **Section 101.** Section 19-1-104, MCA, is amended to read:

11 **"19-1-104. Retirement systems to be considered separate.** (1) Pursuant to section 218(d)(6) of
12 the Social Security Act (42 U.S.C. 418(d)(6)), the public employees' retirement system of the state of
13 Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the
14 state and a separate retirement system with respect to each political subdivision having positions covered
15 thereby by the system.

16 (2) Pursuant to section ~~218(p)(1)~~ 218(l)(1) of the Social Security Act (42 U.S.C. 418(l)(1)), the
17 Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens'
18 retirement system, the highway patrol officers' retirement system of the state of Montana, the public
19 employees' retirement system of the state of Montana, and each municipal police retirement fund and each
20 city participating in the municipal police officers' retirement system are, for the purposes of this chapter,
21 considered separate retirement systems with respect to the state and separate retirement systems with
22 respect to each political subdivision having positions covered thereby by those systems."

23
24 **Section 102.** Section 19-1-402, MCA, is amended to read:

25 **"19-1-402. Contents of federal-state agreement.** The agreement authorized by 19-1-401 may
26 contain provisions relating to coverage, benefits, contributions, effective date, modification and termination
27 of the agreement, administration, and other appropriate provisions as the state agency and secretary of
28 health and human services shall agree upon, but, except as may be otherwise required or permitted by or
29 under the Social Security Act as to the services to be covered, the agreement must provide in effect that:

30 (1) benefits will be provided for employees whose services are covered by the agreement (and their

dependents and survivors) on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

(2) the state will pay to the secretary of the treasury of the United States, at a time or times as may be prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes that would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) the agreement must be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but may not be effective with respect to services performed prior to the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to services is entered into, except that the effective date may be made retroactive to the extent permitted by section ~~218(f)~~ 218(e) of the Social Security Act (42 U.S.C. 418(e));

(4) all services that constitute employment and are performed in the employ of the state by employees of the state must be covered by the agreement; and

(5) all services that constitute employment, are performed in the employ of a political subdivision of the state, and are covered by a plan that is in conformity with the terms of the agreement and that has been approved by the state agency under part 5 must be covered by the agreement."

Section 103. Section 19-1-503, MCA, is amended to read:

"19-1-503. Required provisions of plan. A plan may not be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) it provides that all services that constitute employment and that are performed in the employ of the political subdivisions by employees of the political subdivisions will be covered by the plan, except that it may exclude services performed by individuals to whom section ~~218(e)(3)(C)~~ 218 (c)(3)(B) of the Social Security Act (42 U.S.C. 418(c)(3)(B)) is applicable;

(3) it specifies the sources from which the funds necessary to make the payments required by 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate to make the payments;

(4) it provides for methods of administration of the plan by the political subdivision as are found

1 by the state agency to be necessary for the proper and efficient administration of the plan;

2 (5) it provides that the political subdivision will make reports, in a form and containing information,
3 as the state agency may require and will comply with the provisions that the state agency or the secretary
4 of health and human services finds necessary to ~~assure~~ ensure the correctness and verification of the
5 reports;

6 (6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds
7 that there has been a failure to comply substantially with any provision contained in the plan. The
8 termination is to take effect at the expiration of any notice and on conditions as may be provided by
9 regulations of the state agency and may be consistent with the provisions of the Social Security Act."

10
11 **Section 104.** Section 19-3-1104, MCA, is amended to read:

12 **"19-3-1104. Cancellation of disability retirement benefit upon reemployment.** Any person receiving
13 a disability retirement benefit who becomes an employee is considered reinstated to service from
14 retirement, and the person's retirement benefit is canceled."

15
16 **Section 105.** Section 19-3-1205, MCA, is amended to read:

17 **"19-3-1205. Amount of survivorship benefit.** The survivorship benefit payable to a member's
18 designated beneficiary is the actuarial equivalent of:

19 (1) the accrued portion of the early retirement benefit pursuant to 19-3-906 that would have been
20 payable to the member commencing at age 50 ~~pursuant to 19-3-906~~, if the member had not attained age
21 50 or earned 25 years of service credit at the time of death;

22 (2) if the deceased member had attained age 50 or earned 25 years of service credit at the time
23 of death, the early retirement benefit that would have been payable to the member if the member had
24 retired immediately prior to death; or

25 (3) if the deceased member had attained age 60 or earned 30 years of service credit at the time
26 of death, the service retirement benefit that would have been payable to the member if the member had
27 retired immediately prior to death."

28
29 **Section 106.** Section 19-9-411, MCA, is amended to read:

30 **"19-9-411. Election to purchase additional service.** (1) At any time before retirement, a member

1 may make a written election with the board to purchase additional service credit for the purpose of
2 calculating the member's retirement benefit. Except as provided in subsection (3), the member may
3 purchase 1 year of additional service credit for every 5 years of membership service that the member has
4 qualified under the retirement system.

5 (2) For each year of service credit purchased under this section, a member shall contribute to the
6 pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent
7 actuarial valuation of the system as determined by the board. Contributions may be made in a lump-sum
8 payment or by making additional contributions in installments as agreed upon by the member and the board.

9 (3) A member may elect to qualify no more than a combined total of 5 years of service under
10 19-2-705, ~~19-13-403~~ 19-9-403, and this section.

11 (4) Service purchased under this section is not membership service and may not be used to qualify
12 a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not
13 eligible for normal service retirement."

14
15 **Section 107.** Section 19-9-1101, MCA, is amended to read:

16 **"19-9-1101. Preretirement death benefits.** (1) Upon the death of a member before retirement, the
17 member's surviving spouse or dependent child is eligible for benefits equal to one-half of the member's final
18 average ~~salary~~ compensation as provided in 19-9-804.

19 (2) Upon the death of an inactive nonvested member, the member's surviving spouse or dependent
20 child is eligible for a refund of the member's accumulated contributions."

21
22 **Section 108.** Section 19-20-302, MCA, is amended to read:

23 **"19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following
24 persons must be active members of the retirement system, with the exception that those persons who
25 became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to
26 become members under the provisions of the law at that time are not required to be members:

27 (a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

28 (b) any person who is an administrative officer or a member of the instructional or scientific staff
29 of a unit of the Montana university system and who has not elected or is not required to participate in the
30 optional retirement program under Title 19, chapter 21;

1 (c) any person employed as a ~~speech therapist~~ speech-language pathologist, school nurse, or
2 school psychologist or in an instructional services capacity by the office of the superintendent of public
3 instruction, the office of a county superintendent, a special education cooperative, a public institution of
4 the state of Montana, the Montana state school for the deaf and blind, or a school district;

5 (d) any person who is an administrative officer or a member of the instructional staff of the board
6 of public education;

7 (e) any person who has elected not to become a member of the retirement system and is reentering
8 service in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d);

9 (f) any person who has elected not to become a member of the retirement system, who has been
10 continuously employed in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d) since the time
11 of the election, and who may elect to become a member of the retirement system.

12 (2) A person elected to the office of county superintendent of schools after July 1, 1995, is not
13 eligible for optional membership in the public employees' retirement system under the provisions of
14 19-3-412 and may, within 30 days of taking office, elect to become an active member of the teachers'
15 retirement system. The retirement system membership of an elected county superintendent of schools as
16 of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of
17 county superintendent of schools.

18 (3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

19 (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any
20 fiscal year; and

21 (b) have the compensation for the person's creditable service totally paid by an employer.

22 (4) (a) A substitute teacher:

23 (i) may elect to become an active member of the retirement system on the first day of employment
24 in any fiscal year; or

25 (ii) is required to become an active member of the retirement system on the 31st day of employment
26 in any fiscal year if the substitute teacher has not elected membership under subsection (4)(a)(i).

27 (b) The employer shall give written notification to a substitute teacher on the first day of
28 employment in any fiscal year of the option to elect membership under subsection (4)(a)(i).

29 (5) A substitute teacher who did not elect membership under subsection (4)(a)(i) and who
30 subsequently becomes a member must be awarded creditable service for substitute teaching service if the

1 substitute teacher contributes:

2 (a) an amount equal to the combined employee and employer contributions that would have been
3 made if the substitute teacher had elected membership; plus

4 (b) interest at the rate that the contributions would have earned if they had been on deposit with
5 the retirement system.

6 (6) At any time that a person's eligibility to become a member of the retirement system is in doubt,
7 the retirement board shall determine the person's eligibility for membership. All persons in similar
8 circumstances must be treated alike."

9
10 **Section 109.** Section 19-50-102, MCA, is amended to read:

11 **"19-50-102. Deferred compensation programs permitted -- rules.** (1) The state or a political
12 subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal
13 Revenue Code of 1954 (26 U.S.C. 457), as amended or superseded, and in compliance with regulations
14 of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be
15 established in addition to any retirement, pension, or other benefit plan administered by the state or a
16 political subdivision.

17 (2) An employee may enter into a written agreement with the state or a political subdivision to
18 defer a part of ~~his~~ the employee's compensation for the purpose of investment as provided by this chapter.
19 The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts
20 permitted under applicable sections of the Internal Revenue Code.

21 (3) Compensation deferred pursuant to this chapter is included as compensation for the purpose
22 of computing retirement or pension benefits.

23 (4) The amount of compensation deferred under this chapter may be used to purchase:

24 (a) shares in a state deferred compensation investment fund established pursuant to Title 17 for
25 the purpose of administering a state-invested deferred compensation plan. All contributions made by
26 participants in the state deferred compensation investment fund and all interest or increase in the fund ~~shall~~
27 must be credited to the fund. These funds may be commingled with other state investment funds, but
28 separate accounts must be maintained for participants in the state deferred compensation investment fund.
29 The assets of the fund must be maintained for the benefit of participants and may not be diverted except
30 for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner; or

(d) any combination of ~~subsections (a), (b), or (c) above~~ the items in subsection (4)(a), (4)(b), or (4)(c), as specified by the participant. The shares, accounts, or contracts so purchased are the exclusive property of and stand in the name of the state of Montana or a political subdivision until distributed to an employee in a manner provided in the plan agreement established by the administrator.

(5) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(6) The department or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter."

Section 110. Section 20-1-301, MCA, is amended to read:

"20-1-301. School fiscal year. The school fiscal year ~~shall begin~~ begins on July 1 and ~~end~~ ends on June 30. At least 180 school days of pupil instruction ~~shall~~ must be conducted during each school fiscal year, except that 175 days of pupil instruction for graduating seniors may be sufficient as provided in 20-9-313, or unless a variance for kindergarten has been granted under 20-1-302 or a district is granted a variance under the provisions of chapter 9, part 8, of this title. For any elementary or high school district that fails to provide for at least 180 school days of pupil instruction, the superintendent of public instruction shall reduce the county equalization as defined in 20-9-334 and the state equalization aid as defined in 20-9-343 for the district for that school year by 1/90th for each school day less than 180 school days."

Section 111. Section 20-7-504, MCA, is amended to read:

"20-7-504. State traffic education account -- proceeds earmarked for the account -- transmittal.
(1) There is a traffic education account in the treasury of the state of Montana.

(2) Money collected and accrued from motorcycle safety training courses, designated grants, and motorcycle registration fees or an amount equal to that amount must be deposited in the state traffic education account as provided in 20-7-513 and 20-7-514 and must be available to support only approved motorcycle safety training courses, appropriate motorcycle safety instructor training, and other related

motorcycle safety training activities.

(3) When a court is required to transmit fees directly to the state treasurer, the gross proceeds including the portion of the fees to be credited to the traffic education account must be transmitted to the state treasurer and the appropriate portion must be deposited in the traffic education account."

Section 112. Section 20-9-115, MCA, is amended to read:

"20-9-115. Notice of preliminary budget filing and final budget meeting. Between July 10 and July 20 of each year, the clerk of each district shall publish one notice, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in the clerk's office and open to inspection by all taxpayers. The notice must also state the time and place that the trustees will meet on the fourth second Monday in August for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget."

Section 113. Section 20-9-341, MCA, is amended to read:

"20-9-341. Definition of interest and income ~~monye~~ money. (1) As used in this title, the term "interest and income ~~monye~~ money" means the total of the following ~~revenuee~~ revenue, as provided for by Article X, section 5, of the 1972 Montana constitution:

(a) 95% of the interest received from the investment of the public school fund;

(b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;

(c) 95% of the income received from the leasing of or sale of timber from state school lands after any deductions that may be made under the provisions of Title 77, chapter 1, part 6; and

(d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of each revenue shall the revenue described in subsections (1)(a) through (1)(d) must be annually credited to the public school fund.

The remaining 5% of each revenue shall the revenue described in subsections (1)(a) through (1)(d) must be annually credited to the public school fund. The remaining 5% may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

1 **Section 114.** Section 20-9-347, MCA, is amended to read:

2 **"20-9-347. Distribution of BASE aid and special education allowable cost payments in support of**
3 **BASE funding program -- exceptions.** (1) The superintendent of public instruction shall:

4 (a) supply the county treasurer and the county superintendent with a monthly report of the
5 payment of BASE aid in support of the BASE funding program of each district of the county;

6 (b) in the manner described in 20-9-344, provide for a state advance to each county in an amount
7 that is no less than the amount anticipated to be raised for the basic county tax fund as provided in
8 20-9-331 and for the basic special tax fund as provided in 20-9-333;

9 (c) adopt rules to implement the provisions of subsection (1)(b).

10 (2) (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in
11 20-9-344 for distribution of the BASE aid payments if the distribution will cause a district to register
12 warrants under the provisions of 20-9-212(8).

13 (b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the
14 superintendent of public instruction, in the manner required by the office, that the payment schedule
15 prescribed in 20-9-344 will result in insufficient money available in all funds of the district to make payment
16 of the district's warrants. The county treasurer shall confirm the anticipated deficit. This section may not
17 be construed to authorize the superintendent of public instruction to exceed a district's annual payment for
18 BASE aid.

19 (3) The superintendent of public instruction shall:

20 (a) distribute special education allowable cost payments to districts; and

21 (b) supply the county treasurer and the county superintendent of public instruction schools with
22 a report of payments for special education allowable costs to districts of the county." ;

23
24 **Section 115.** Section 20-9-466, MCA, is amended to read:

25 **"20-9-466. School district bonds -- state loan -- qualifications for state loan.** (1) The department
26 of administration shall make a loan from the coal severance tax school bond contingency loan fund,
27 established in 17-5-703, to a school district in an amount equal to the principal and interest payment on
28 qualifying bonds when due in accordance with the provisions contained in the bonds. In order to receive
29 a loan, the school district must:

30 (a) have issued bonds between January 21, 1992, and January 1, 1993, pursuant to 20-9-421

1 and through 20-9-464;

2 (b) be prevented from making principal and interest payments on the bonds because the debt
3 service levy for the bonds:

4 (i) has been declared invalid or unenforceable under Article II, section 4, or Article X, section 1,
5 of the Montana constitution by a final court order; or

6 (ii) is prevented by an injunction;

7 (c) have exhausted the debt service reserve for the bonds; and

8 (d) have complied with all the requirements for the bonds contained in 20-9-467 and this section.

9 (2) To qualify for the state loan described in subsection (1), a school district, before issuing its
10 bonds, must have:

11 (a) received voter approval for bonds pursuant to 20-9-421;

12 (b) following voter approval, received a certificate of eligibility from the board of public education
13 stating that after consultation with the superintendent of public instruction, the board has determined that
14 a minimum of 75% of the principal amount of the proposed bonds will be used to:

15 (i) restore, rebuild, or replace a destroyed or severely damaged school building;

16 (ii) correct one or more building deficiencies that affect the health and safety of school children;

17 (iii) correct one or more deficiencies that prevent the school district from meeting current
18 accreditation standards; or

19 (iv) address any combination of circumstances described under subsections (2)(b)(i) through
20 (2)(b)(iii); and

21 (c) received a final certificate of allocation from the department of administration pursuant to
22 subsection (5).

23 (3) The board of public education shall:

24 (a) maintain a record of the total principal amount of bonds for which certification has been issued;
25 and

26 (b) immediately furnish to the department a copy of each certificate issued.

27 (4) Upon receipt of a copy of the certificate from the board of public education, the department
28 shall temporarily allocate loan authority to the school district equal to the principal amount of bonds
29 indicated in the board's certificate. The principal amount of bonds for which final certification is issued may
30 be less than the principal amount of bonds approved by the voters pursuant to subsection (2)(a).

1 (5) To obtain a final certificate of allocation, a school district shall provide the department, on a
2 form provided by the department, the following information:

3 (a) the tentative date of sale of the school district's bonds;

4 (b) the principal amount of the bonds to be issued;

5 (c) the name and addresses of bond counsel and the financial advisor; and

6 (d) other information as requested by the department.

7 (6) Upon issuance of the bonds, a school district shall forward to the department a copy of the
8 district's bond resolution, the final opinion of bond counsel on the bonds, and a schedule of principal and
9 interest payments on the bonds to maturity. The bond resolution must include a covenant agreeing to:

10 (a) defend any lawsuit challenging the school district's authority to sell and issue the bonds and
11 to levy a tax for payment of the principal of and interest on the bonds;

12 (b) provide to the department before August 1 of each year a report of the school district's
13 outstanding principal balance as of the preceding June 30 on the bonds secured by state loans;

14 (c) refund the bonds on any normal call date if, during the term of the bonds, the school district
15 can refund its bonds without the state loan security and without increasing its total debt service costs on
16 the bonds; and

17 (d) enter into a contract with the department establishing a schedule to repay the state if the state
18 loans the school district money to make payments on district bonds. Notwithstanding other provisions of
19 law, the loan must be repaid by the school district at a rate equivalent to the average yield of the pooled
20 investment fund established in 17-6-203(3), commonly known as the short-term investment pool, for the
21 period of the loan. ~~Repayment must begin no later than January 1, 1994, and the~~ The loan must be repaid
22 in full within 10 years from the date the first loan is issued to a school district. Repayment must be paid
23 from the sources designated for repayment of the bonds or from any other revenue and assets of the school
24 district, including state equalization funds currently distributed or which may be distributed to the district.
25 Loan repayments received by the department must be deposited in the coal severance tax school bond
26 contingency loan fund.

27 (7) The department shall maintain a record of the total principal amount of bonds secured by state
28 loans.

29 (8) A school district issuing bonds subject to 20-9-467 and this section may apply to the attorney
30 general for a determination as to whether its bonds are affected by a court order declaring that the bonds

of another district are invalid or unenforceable.

(9) A school district whose authority to levy a property tax to pay principal of and interest on bonds has been challenged shall, upon notification of the challenge, immediately notify the attorney general and the department."

Section 116. Section 20-15-326, MCA, is amended to read:

"20-15-326. Determination of available financing -- fixing and levying property taxation for emergency budget. (1) After the last day of the fiscal year for which an emergency budget has been adopted, the board of trustees shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund must be determined by deducting from the county treasurer's yearend cash balance for the fund the outstanding warrants or registered warrants issued under the regularly adopted final budget for the fund and the cash reserve for the fund that the trustees have established, within the limitations of law, for the following fiscal year.

(2) The county treasurer shall prepare and deliver a statement on the financial cash status of each fund included on an emergency budget for a district that had an emergency budget during the preceding year to the board of county commissioners by the first Monday in August. The statement for each district emergency budget must include:

(a) the total amount of emergency warrants that are registered against each fund of the district; and

(b) the additional amount of money that is required to finance the registered warrants and interest on the warrants and that must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection ~~(2)(a)~~ (2)(b), the board of county commissioners shall, at the time all other district and county taxes are fixed and levied, levy a tax on the taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer."

Section 117. Section 20-15-404, MCA, is amended to read:

"20-15-404. Trustees to adhere to certain other laws. Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

- (1) the teachers' retirement provisions of Title 19, chapter 20;
- (2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;
- (3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;
- (4) the adult education provisions of ~~20-7-701 through 20-7-713~~ Title 20, chapter 7, part 7;
- (5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221, 20-9-223, and 20-9-512;
- (6) the school bond provisions of 20-9-401 through 20-9-408, 20-9-410 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465;
- (7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;
- (8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;
- (9) the school elections provisions of Title 20, chapter 20;
- (10) the students' rights provisions of 20-25-511 through 20-25-516; and
- (11) the health provisions of 50-1-206."

Section 118. Section 20-25-501, MCA, is amended to read:

"20-25-501. Definitions. (1) Terms used in this part are defined as follows:

- (a) "Domicile" means a person's true, fixed, and permanent home and place of habitation.
- ~~(b) "Emancipated minor" means a person under the age of 18 years who is self-supporting from personal earnings or is married. A person who received more than 25% of the cost of support from any person other than an agency of the government may not be considered an emancipated minor.~~

~~(b)~~ (b) "Minor" means a male or female person who has not obtained the age of 18 years.

~~(d)~~ (c) "Qualified person" means a person legally qualified to determine the person's own domicile.

~~(e)~~ (d) "Resident student" means:

- (i) a student who has been domiciled in Montana for 1 year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education is not alone sufficient to qualify for residence in Montana.

- (ii) any graduate of a Montana high school who is a citizen or resident alien of the United States

and whose parents, parent, or guardian has resided in Montana at least 1 full year of the 2 years immediately preceding the student's graduation from high school. The classification continues for not more than 4 academic years if the student remains in continuous attendance at a unit; or

(iii) a member of the armed forces of the United States assigned to and residing in Montana, the member's spouse, or the member's dependent children.

(2) In the event that the definition of residency or any portion ~~thereof~~ of the definition is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system may make rules on what constitutes adequate evidence of residency status not inconsistent with those court decisions."

Section 119. Section 22-1-412, MCA, is amended to read:

"22-1-412. Purpose. It is the purpose of ~~22-1-412 and 22-1-413~~ and this section to establish a program whereby state funds may be appropriated to the Montana state library commission to provide the benefits of quality public library service to all residents of Montana by developing and strengthening local public libraries through library federations as defined in 22-1-402."

Section 120. Section 22-3-429, MCA, is amended to read:

"22-3-429. Requests for consultation -- public notice -- appeal of findings. (1) A federal or state entity that acts upon a proposed federal or state action or an application for a federal, state, or local permit, license, lease, or funding may request the views of the historic preservation officer concerning:

(a) the recommended eligibility for a register listing of any heritage property or paleontological remains;

(b) the effects of a proposed action, activity, or undertaking on heritage property or remains that are found to be eligible for register listing; and

(c) the appropriateness of a proposed plan for the avoidance or mitigation of effects.

(2) A request for comment pursuant to 16 U.S.C. ~~470(f)~~ 470f may be made simultaneously with a request pursuant to subsection (1). The historic preservation officer shall respond in writing to a request within 30 calendar days of receiving the request and shall address each property in the request and each topic of the request. In the event that an agency requests simultaneous consultation for two or more criteria under this section, the agency and historic preservation officer may extend the 30-day review period by

1 mutual agreement. If the historic preservation officer fails to comment within that time, that failure is
2 construed as concurrence with the agency's recommendation. In the event of failure to comment on a
3 specific undertaking, the historic preservation officer may not change a finding for a heritage property at
4 a later date.

5 (3) If the proposed finding is that a heritage property or paleontological remains are involved and
6 that a proposed activity will have an adverse impact on the property or remains, the proposed finding must
7 address all properties or remains involved and describe the characteristics that illustrate the qualities that
8 make the property or remains eligible for inclusion in the register. If the proposed finding includes a
9 conclusion that a property or remains may be eligible but additional information or study is needed to reach
10 an eligibility finding, the finding must specify the type and amount of information required in accordance
11 with standards and guidelines as provided in 22-3-428.

12 (4) At the time that the state or federal agency requests the views of the historic preservation
13 officer as provided in subsection (1), the agency shall provide notice to the applicant, affected property
14 owners, and other interested persons of the request for consultation and shall identify locations where the
15 submitted materials may be reviewed.

16 (5) The applicant and any affected property owners have 20 days in which to appeal the historic
17 preservation officer's finding to the director. The appeal notice must include a written statement of reasons
18 for the appeal and any additional supporting information.

19 (6) The director of the historical society shall issue a final finding within 30 days of the expiration
20 of the 20-day appeal period provided for under subsection (5). The issuance of this finding does not limit
21 the rights of any applicant or affected property owner to challenge a finding under an existing federal law,
22 regulation, or regulatory or administrative process.

23 (7) If the applicant or an affected property owner is not satisfied with the finding of the director
24 of the historical society concerning the eligibility of the property or remains for listing in the register or a
25 finding of adverse effect to the property, the entity or property owner may appeal the finding to the district
26 court in either Lewis and Clark County or a county in which affected property is located. Appeal may be
27 taken by filing a petition with the district court citing the decision by the director of the historical society
28 and the evidence upon which the director relied. On appeal, the district court may consider any documents
29 supporting or not supporting the finding, the written comments received by the director of the historical
30 society, and any additional evidence that may be submitted to the court. The district court may substitute

1 its judgment for the judgment of the director of the historical society as to the weight of the evidence."

2
3 **Section 121.** Section 22-3-603, MCA, is amended to read:

4 **"22-3-603. Management of historic sites and buildings -- contracts.** (1) The Montana historical
5 society may accept gifts, grants, bequests, or contributions of money, property, labor, or materials for use
6 in the operation, maintenance, repair, preservation, or renovation of any historic site or building owned by
7 the state of Montana.

8 (2) The Montana historical society may contract with a local nonprofit corporation for the
9 operation, maintenance, preservation, repair, or renovation of any historic site or building owned by the
10 state. The nonprofit corporation may not be considered a public agency for purposes of Title 18, except
11 for the provisions in chapter 2, part 2, or for the purposes of other statutes applicable to the historical
12 society if 25% of the total annual expenses for all costs of operation, maintenance, repair, preservation,
13 and renovation of the historic site or building is provided by in-kind or donated labor or materials by or on
14 behalf of the contracting local nonprofit corporation. The nonprofit corporation must conform to the
15 provisions of Title 18, chapter 2, part 2, and Title 35, chapter 2.

16 (3) ~~No~~ A contract may not be entered into ~~nor~~ or any other obligation incurred for the purposes
17 in subsection (1) until money has been appropriated by the legislature or is otherwise available. If funds are
18 otherwise available, Title 18, chapter 2, parts 1, 3, and 4, are not applicable.

19 (4) The Montana historical society may require a corporation managing a property pursuant to
20 subsection ~~(3)~~ (2) to deposit in a local financial institution all profits, ~~revenues~~ revenue, royalties, or fees
21 received or all gifts, grants, bequests, or other contributions collected by the corporation for the benefit of
22 the property. All funds must be accounted for pursuant to the management contract and audited quarterly
23 by the society or its designee, and expenditures of the funds may be used only for the operation,
24 maintenance, preservation, repair, renovation, and management of the property."

25
26 **Section 122.** Section 23-2-523, MCA, is amended to read:

27 **"23-2-523. Prohibited operation and mooring -- enforcement.** (1) A person may not operate or
28 knowingly permit a person to operate a motorboat or vessel or manipulate water skis, a surfboard, or a
29 similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or
30 property of a person by:

(a) engaging in maneuvers that unreasonably or unnecessarily endanger life, limb, or property, including but not limited to weaving through congested vessel traffic or jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed and including swerving at the last possible moment to avoid collision, following directly behind a waterskier, speeding in confined or restricted areas, and buzzing or wetting down others, which constitute reckless operation of a vessel;

(b) crossing or jumping the wake of another vessel when within 100 yards of the vessel or within 100 yards of a waterskier being towed by the vessel, except when directly entering or leaving a public or private marina, waterski facility, or other watercraft docking or loading area.

(2) A person may not operate a motorboat, including a sailboat propelled by a motor of any kind, or manipulate water skis, a surfboard, or a similar device attached to a motorboat while under the influence of alcohol, drugs, or a combination of the two.

(3) It is unlawful for the owner of a motorboat or vessel or a person having the motorboat or vessel in charge or in control to authorize or knowingly permit the ~~same~~ motorboat or vessel to be operated by a person who by reason of physical or mental disability is incapable of operating the watercraft under the prevailing circumstances.

(4) A person may not operate or knowingly permit a person to operate a motorboat or vessel at a rate of speed greater than will permit the person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta that is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) A person may not make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a United States coast guard approved personal flotation device in good and serviceable condition.

(7) A person may not moor a vessel to buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to a buoy or beacon, except in the act of maintenance work on the buoy or beacon, nor may any person deface, remove, or destroy a buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

1 (8) If an officer whose duty it is to enforce ~~the sections of~~ this law observes a vessel being used
2 without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in the
3 officer's judgment the use creates an especially hazardous condition, the officer may direct the operator
4 to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the
5 vessel, including directing the operator to return to a mooring or launching site and to remain there until
6 the situation creating the hazard is corrected or ended.

7 (9) The population density and heavy recreational use of certain lakes require a noise standard more
8 restrictive than the standard set in 23-2-526, in order to protect the public health and safety. Unless
9 operated on a river or stream in compliance with a ~~commission~~ rule adopted under 23-2-521(9), a person
10 may not operate a motorboat or personal watercraft on Flathead Lake, situated in Lake and Flathead
11 Counties, Echo Lake, situated in Flathead County, or Swan Lake, situated in Lake County, in proximity to
12 the shoreline if the noise emitted is greater than 75 dbA measured at the shoreline in accordance with the
13 shoreline sound level measurement procedure (SAE J1970).

14 (10) Unless accompanied by a person 18 years of age or older, a person 12 years of age or
15 younger may not operate a motorboat or a personal watercraft that is powered by a motor rated at more
16 than 10 horsepower. A person 13 or 14 years of age may not operate a vessel or personal watercraft
17 powered by a motor rated at more than 10 horsepower without possessing a valid Montana motorboat
18 operator's safety certificate or evidence of completion of a Montana-approved water safety course or unless
19 accompanied by a person 18 years of age or older.

20 (11) A person who owns or has charge or control of a motorboat or personal watercraft powered
21 by a motor rated at more than 10 horsepower may not authorize or knowingly permit the motorboat or
22 personal watercraft to be operated:

23 (a) by a person 12 years of age or younger unless accompanied by a person 18 years of age or
24 older; or

25 (b) by a person 13 or 14 years of age unless the person possesses a valid Montana motorboat
26 operator's safety certificate or evidence of completion of a Montana-approved water safety course or is
27 accompanied by a person 18 years of age or older.

28 (12) A person may not rent a motorboat or a personal watercraft powered by a motor rated at more
29 than 10 horsepower to a person under 18 years of age."
30

1 **Section 123.** Section 23-2-536, MCA, is amended to read:

2 **"23-2-536. (Temporary) Creation of boating advisory council -- appointment of members -- duties.**

3 (1) The department director appointed under 2-15-3401 shall appoint a boating advisory council to advise
4 the department on the expenditure of funds in the motorboat account in the state special revenue fund.

5 (2) The boating advisory council must be composed of at least five members of the public, each
6 of whom must be interested in boating activities and the use of public boating facilities.

7 (3) The boating advisory council is attached to the department in an advisory capacity only, as
8 defined in 2-15-102(8).

9 (4) All costs associated with the boating advisory council must be paid from the motorboat account
10 in the state special revenue fund. Council members are not entitled to compensation or travel expenses as
11 provided in 2-15-122. (Terminates June 30, 2002--sec. 9, Ch. 476, L. 1995.)"

12
13 **Section 124.** Section 23-2-622, MCA, is amended to read:

14 **"23-2-622. Registration of racing snowmobile not required.** A snowmobile built or used exclusively
15 for racing in sanctioned competitive events or organized races, including testing areas designated by the
16 sponsoring entity, is exempt from the certificate of ownership requirements of ~~23-6-611~~ 23-2-611 and
17 registration under 23-2-616."

18
19 **Section 125.** Section 23-2-717, MCA, is amended to read:

20 **"23-2-717. Credit for overpayment -- interest on overpayment.** (1) If the department of commerce
21 determines that the amount of the assessment, penalty, or interest paid for any year is more than the
22 amount due, the amount of the overpayment must be credited against any assessment, penalty, or interest
23 then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through
24 reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution.

25 (2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as
26 is provided in 23-2-716(2) from the due date of the return or from the date of overpayment, whichever is
27 later, to the date the department of commerce approves refunding or crediting of the overpayment.

28 (3) (a) Interest does not accrue during any period in which the processing of a claim for refund is
29 delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the
30 department of commerce for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable."

Section 126. Section 23-2-736, MCA, is amended to read:

"23-2-736. Skier's conduct -- inherent risks. (1) A skier has the duty to ~~conduct himself~~ ski at all times ~~so~~ in a manner that ~~he~~ avoids injury to ~~himself~~ the skier and others and to be aware of the inherent risks of the sport.

(2) A skier:

(a) must know the range of ~~his~~ the skier's ability and safely ~~conduct himself~~ ski within the limits of that ability and ~~his~~ the skier's equipment so as to negotiate any section of terrain or ski trail safely and without injury or damage. A skier must know that ~~his~~ the skier's ability may vary because of trail changes caused by weather, grooming changes, or skier use.

(b) shall maintain control of speed and course so as to prevent injury to ~~himself~~ the skier or others;

(c) ~~must~~ shall abide by the requirements of the skier responsibility code that is published by the national ski areas association and that is ~~current on April 4, 1989~~ posted as provided in 23-2-733; and

(d) shall obey all posted or other warnings and instructions of the ski area operator.

(3) A person may not:

(a) place an object in the ski area or on the uphill track of a passenger tramway that may cause a passenger or skier to fall;

(b) cross the track of a passenger tramway except at a designated and approved point; or

(c) if involved in a skiing accident, depart from the scene of the accident without:

(i) leaving personal identification; or

(ii) notifying the proper authorities and obtaining assistance when ~~he~~ the person knows that a person involved in the accident is in need of medical or other assistance.

(4) A skier ~~must~~ shall accept all legal responsibility for injury or damage of any kind to the extent

1 that the injury or damage results from risks inherent in the sport of skiing. Risks inherent in the sport of
2 skiing are:

3 (a) variations in skiing terrain, including surface and subsurface snow or ice conditions naturally
4 occurring or resulting from weather changes, skier use, or grooming or snowmaking operations;

5 (b) bare spots and thin snow cover caused by limited snowfall, melting, wind erosion, skier action,
6 grooming, or unconsolidated base;

7 (c) forest growth on designated trails;

8 (d) skiing in an area not designated as a ski trail;

9 (e) clearly visible or plainly marked improvements or equipment;

10 (f) clearly visible or plainly marked mobile equipment and attachments, whether moving or
11 stationary, used by the ski area operator; and

12 (g) avalanches, except on open, designated ski trails."
13

14 **Section 127.** Section 23-5-406, MCA, is amended to read:

15 **"23-5-406. Exempt charitable organizations and facilities.** (1) (a) An organization granted an
16 exemption under 26 U.S.C. 501(c)(3), (c)(4), (c)(8), or (c)(19):

17 (i) on or before January 15, 1989, is exempt from taxation and the permit fee imposed by this part;

18 (ii) after January 15, 1989, is exempt from taxation and one-half the permit fee imposed by this
19 part if the organization carries on gambling activities for no more than 60 days a calendar year.

20 (b) An organization provided for in subsection (1)(a) shall:

21 (i) limit its live bingo and keno activities to its main premises or place of operations and to events
22 at other places operated by other charitable organizations or by a government unit or entity;

23 (ii) comply with other statutes and rules relating to the operation of live bingo and keno; and

24 (iii) apply to the department for a permit to conduct charitable live bingo or keno games.

25 (2) A long-term care facility, as defined in 50-5-101, or a retirement home, as defined in subsection
26 (4) of this section, that has obtained an operator's license and a permit from the department to operate live
27 bingo or keno is exempt from taxation and the permit fee imposed by this part if the facility:

28 (a) limits participation in live bingo and keno games to persons using the facility and their guests;

29 (b) limits live bingo or keno activities to its main premises or place of operation; and

30 (c) complies with other statutes and rules relating to the operation of live bingo and keno.

(3) The department may revoke or suspend the permit of an organization or a facility provided for in subsection (1) or (2) if, after investigation, the department determines that the organization or facility is operating or has contracted with a nonqualified organization that is operating live bingo or keno in a predominantly commercial manner.

(4) For purposes of this section, "retirement home" means a building in which sleeping rooms without cooking facilities in each room are rented to three or more persons who are 60 years of age or older and who do not need skilled nursing care, intermediate nursing care, or personal nursing care, as defined in 50-5-101."

Section 128. Section 23-7-103, MCA, is amended to read:

"23-7-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Commission" means the state lottery commission created by 23-7-201.

(2) "Director" means the director appointed by the governor under 23-7-210 to administer and manage the state lottery.

(3) "Lottery" or "state lottery" means the Montana state lottery created and operated pursuant to this chapter.

(4) (a) "Lottery game" means any procedure, including any ~~on-line~~ online or other procedure using a machine or electronic device, by which one or more prizes are distributed among persons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, and sports pool games, ~~except~~.

(b) The term does not mean games prohibited by Title 23, chapter 5, part 1; ~~lotteries prohibited~~ Calcutta pools governed by Title 23, chapter 5, part 2; card games regulated by Title 23, chapter 5, part 3; raffles and bingo games governed by Title 23, chapter 5, part 4; and sports pools governed by Title 23, chapter 5, part 5."

Section 129. Section 23-7-211, MCA, is amended to read:

"23-7-211. Powers and duties of director. (1) The director shall:

(a) administer the operation of the state lottery in accordance with this chapter and the rules and other directives of the commission;

(b) appoint an assistant director for security and employ and direct personnel necessary to the

1 operation of the state lottery;

2 (c) license lottery ticket or chance sales agents and suspend or revoke licenses pursuant to this
3 chapter and commission rules; and

4 (d) maintain, with the assistant director for security, the security of the state lottery.

5 (2) (a) With the concurrence of the commission or pursuant to commission rules, the director may
6 enter into contracts for materials, equipment, and supplies to be used in the operation of the state lottery,
7 for the design and installation of games, for consultant services, for promotion of the lottery, for the sale
8 of tickets and chances, and for other services. The state shall provide for management, security, and
9 internal audit control.

10 (b) When a contract is awarded, a performance bond satisfactory to and in an amount determined
11 by the commission and executed by a surety company authorized to do business in this state or otherwise
12 secured in a manner satisfactory to the commission must be delivered to the commission. The requirements
13 for this bond must be at least as stringent as those stated in 18-4-312~~(4)~~(3)."

14
15 **Section 130.** Section 23-7-301, MCA, is amended to read:

16 **"23-7-301. Ticket or chance sales agents -- licenses.** (1) Lottery tickets or chances may be sold
17 only by ticket or chance sales agents licensed by the director in accordance with this section.

18 (2) The commission shall by rule determine the places at which state lottery game tickets or
19 chances may be sold.

20 (3) (a) Before issuing a license, the director shall consider:

21 (i) the financial responsibility and security of the applicant and ~~his~~ the applicant's business or
22 activity;

23 (ii) the accessibility of ~~his~~ the applicant's place of business or activity to the public; and

24 (iii) the sufficiency of existing licenses to serve the public convenience and the volume of the
25 expected sales.

26 (b) ~~No~~ A person under 18 years of age may not sell lottery tickets or chances.

27 (c) A license as an agent to sell lottery tickets or chances may not be issued to any person to
28 engage in business exclusively as a lottery ticket or chance sales agent.

29 (4) The director may issue temporary licenses upon conditions ~~he~~ that the director considers
30 necessary.

1 (5) License applicants shall pay a \$50 fee to cover the cost of investigating and processing the
2 application.

3 (6) The director may require a bond from any licensed agent in an amount provided in the
4 commission's rules and may purchase a blanket bond covering the activities of licensed agents.

5 (7) A licensed agent shall display ~~his~~ the license or a copy ~~thereof~~ of the license conspicuously in
6 accordance with the commission's rules.

7 (8) A license is not assignable or transferable.

8 (9) An employee of a ticket or chance sales agent may not be required to sell lottery game tickets
9 or chances if the sale is against ~~his~~ the employee's religious or moral beliefs.

10 (10) Sales agents are entitled to a commission of no more than 10% of the face value of tickets
11 and chances that they purchase from the lottery and do not return. However, to further the sale of lottery
12 products, the lottery commission may adopt rules providing additional commissions to sales agents based
13 on incremental sales. Commissions may not come from that part of all gross revenue that is net revenue
14 and is paid to the ~~superintendent of public instruction~~ general fund. The commissions are statutorily
15 appropriated, as provided in 17-7-502, to the lottery.

16 (11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully
17 showing ~~his~~ the agent's sales and provide it for inspection upon request of the commission, the director,
18 the department of commerce, the office of the legislative auditor, or the office of the attorney general.

19 (12) Sales agents may pay the state lottery only by check, bankdraft, electronic ~~fund~~ funds transfer,
20 or other recorded, noncash, financial transfer method as determined by the director.

21 (13) A license may be suspended or revoked for failure to maintain the license qualifications
22 provided in subsection (3) or for violation of any provision of this chapter or a commission rule. Prior to
23 suspension or revocation, the licensee must be given notice and an opportunity for a hearing."
24

25 **Section 131.** Section 25-10-206, MCA, is amended to read:

26 "25-10-206. **Secretary of state's fee for accepting service of process.** The fee of ~~\$5~~ paid by the
27 plaintiff to the secretary of state pursuant to part 6 of chapter 3 and Rule 4D(6), M.R.Civ.P., ~~shall~~ must be
28 taxed as part of ~~his~~ the plaintiff's costs if ~~he~~ the plaintiff prevails in the action."
29

30 **Section 132.** Section 27-1-307, MCA, is amended to read:

1 **"27-1-307. Definitions.** As used in ~~27-1-307 and~~ 27-1-308 and this section:

2 (1) "Collateral source" means a payment for something that is later included in a tort award and
3 ~~which that~~ is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

4 (a) for medical expenses and disability payments under the federal Social Security Act, any federal,
5 state, or local income disability act, or any other public program;

6 (b) under any health, sickness, or income disability insurance or automobile accident insurance that
7 provides health benefits or income disability coverage, and any other similar insurance benefits available
8 to the plaintiff, except life insurance;

9 (c) under any contract or agreement of any person, group, organization, partnership, or corporation
10 to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except
11 gifts or gratuitous contributions or assistance;

12 (d) any contractual or voluntary wage continuation plan provided by an employer or other system
13 intended to provide wages during a period of disability; and

14 (e) any other source, except the assets of the plaintiff or of ~~his~~ the plaintiff's immediate family if
15 ~~he the plaintiff~~ is obligated to repay a member of ~~his~~ the plaintiff's immediate family.

16 (2) "Person" includes individuals, corporations, associations, societies, firms, partnerships,
17 joint-stock companies, government entities, political subdivisions, and any other entity or aggregate of
18 individuals.

19 (3) (a) "Plaintiff" means a person who alleges ~~that he~~ to have sustained bodily injury, or on whose
20 behalf recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable
21 interest in a recovery.

22 (b) The term includes:

23 (i) a legal representative;

24 (ii) a person with a wrongful death or surviving cause of action;

25 (iii) a person seeking recovery on a claim for loss of consortium, society, assistance,
26 companionship, or services; and

27 (iv) any other person whose right of recovery or whose claim or status is derivative of one who has
28 sustained bodily injury or death."

29
30 **Section 133.** Section 27-1-718, MCA, is amended to read:

1 **"27-1-718. Civil penalty for shoplifting.** (1) An adult or emancipated minor, ~~as defined in~~
2 ~~20-25-501,~~ who takes possession of any goods, wares, or merchandise displayed or offered for sale by
3 any store or other mercantile establishment without the consent of the owner or seller and with the
4 intention of converting the goods to the taker's own use without having paid the purchase price of the
5 goods is liable to the owner or seller for a penalty, whether or not the goods have been returned
6 undamaged, in the amount of the greater of \$100 or the retail value of the goods, not to exceed \$500. This
7 amount is in addition to actual damages.

8 (2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed
9 or offered for sale by any store or other mercantile establishment without the consent of the owner or seller
10 and with the intention of converting the goods to the minor's own use without having paid the purchase
11 price of the goods, the minor's parent or legal guardian having custody of the minor is liable to the owner
12 or seller for a penalty, whether or not the goods have been returned undamaged, equal to the greater of
13 \$100 or the retail value of the goods, not to exceed \$500. For the purposes of this subsection (2), liability
14 may not be imposed upon any governmental or private agency that has been assigned responsibility for the
15 minor child pursuant to court order or action of the department of corrections or the department of public
16 health and human services.

17 (3) Judgments, but not claims, arising under this section may be assigned.

18 (4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil
19 action under this section.

20 (5) For purposes of this section, the term "emancipated minor" means a person under 18 years of
21 age who is self-supporting from personal earnings or is married. A person who received more than 25%
22 of the cost of support from any person other than an agency of the government may not be considered an
23 emancipated minor."
24

25 **Section 134.** Section 30-4-213, MCA, is amended to read:

26 **"30-4-213. Final payment of item by payor bank -- when provisional debits and credits become**
27 **final -- when certain credits become available for withdrawal.** (1) An item is finally paid by a payor bank
28 when the bank has done any of the following, whichever happens first:

29 (a) paid the item in cash; or

30 (b) settled for the item without having a right to revoke the settlement under statute, clearinghouse

1 rule, or agreement; or

2 (c) made a provisional settlement for the item and failed to revoke the settlement in the time and
3 manner permitted by statute, clearinghouse rule, or agreement.

4 (2) If provisional settlement for an item between the presenting and payor banks is made through
5 a clearinghouse or by debits or credits in an account between them, then to the extent that provisional
6 debits or credits for the item are entered in accounts between the presenting and payor banks or between
7 the presenting and successive prior collecting banks seriatim, they become final upon final payment of the
8 item by the payor bank.

9 (3) If a collecting bank receives a settlement for an item which is or becomes final (subsections
10 (3) and (4) of 30-4-211 and subsection (2) of ~~30-4-213~~ this section) the bank is accountable to its
11 customer for the amount of the item and any provisional credit given for the item in an account with its
12 customer becomes final.

13 (4) Subject to applicable law stating a time for availability of funds and any right of the bank to
14 apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account
15 becomes available for withdrawal as of right:

16 (a) if the bank has received a provisional settlement for the item, when such settlement becomes
17 final and the bank has had a reasonable time to receive return of the item and the item has not been
18 received within that time;

19 (b) if the bank is both the depository bank and the payor bank and the item is finally paid, at the
20 opening of the bank's second banking day following receipt of the item.

21 (5) Subject to applicable law stating a time for availability of funds and any right of a bank to apply
22 a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right
23 at the opening of the bank's next banking day after receipt of the deposit."
24

25 **Section 135.** Section 30-10-103, MCA, is amended to read:

26 **"30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context
27 requires otherwise, the following definitions apply:

28 (1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in
29 securities for the account of others or for the person's own account.

30 (b) The term does not include:

1 (i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

2 (ii) a person who does not have a place of business in this state if the person effects transactions
3 in this state exclusively with or through the issuers of the securities involved in the transactions, other
4 broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies
5 as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial
6 institutions or institutional buyers, whether acting for themselves or as trustee.

7 (2) "Commissioner" means the securities commissioner of this state.

8 (3) (a) "Commodity" means:

9 (i) any agricultural, grain, or livestock product or byproduct;

10 (ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether
11 characterized as precious, semiprecious, or otherwise;

12 (iii) any fuel, whether liquid, gaseous, or otherwise;

13 (iv) foreign currency; and

14 (v) all other goods, articles, products, or items of any kind.

15 (b) Commodity does not include:

16 (i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it
17 contains;

18 (ii) real property or any timber, agricultural, or livestock product grown or raised on real property
19 and offered and sold by the owner or lessee of the real property; or

20 (iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a
21 private sale by the owner.

22 (4) "Commodity Exchange Act" means the federal statute of that name ~~as amended on the~~
23 ~~effective date of this subsection.~~

24 (5) "Commodity futures trading commission" means the independent regulatory agency established
25 by congress to administer the Commodity Exchange Act.

26 (6) (a) "Commodity investment contract" means any account, agreement, or contract for the
27 purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the
28 offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or
29 whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment
30 or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage

1 contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to
2 the contrary, is presumed to be offered or sold for speculation or investment purposes.

3 (b) A commodity investment contract does not include a contract or agreement that requires, and
4 under which the purchaser receives, within 28 calendar days after the payment in good funds of any
5 portion of the purchase price, physical delivery of the total amount of each commodity to be purchased
6 under the contract or agreement. The purchaser is not considered to have received physical delivery of the
7 total amount of each commodity to be purchased under the contract or agreement when the commodity
8 or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien
9 arises in connection with the purchase of each commodity or commodities.

10 (7) (a) "Commodity option" means any account, agreement, or contract giving a party to the
11 account, agreement, or contract the right but not the obligation to purchase or sell one or more
12 commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity,
13 bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

14 (b) The term does not include an option traded on a national securities exchange registered with
15 the U.S. securities and exchange commission.

16 (8) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

17 (9) (a) "Investment adviser" means a person who, for compensation, engages in the business of
18 advising others, either directly or through publications or writings, as to the value of securities or as to the
19 advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a
20 regular business, issues or promulgates analyses or reports concerning securities.

21 (b) The term includes a financial planner or other person who:

22 (i) as an integral component of other financially related services, provides the investment advisory
23 services described in subsection (9)(a) to others for compensation, as part of a business; or

24 (ii) represents to any person that the financial planner or other person provides the investment
25 advisory services described in subsection (9)(a) to others for compensation.

26 (c) Investment adviser does not include:

27 (i) an investment adviser representative;

28 (ii) a bank, savings institution, trust company, or insurance company;

29 (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice
30 of the person's profession or who does not accept or receive, directly or indirectly, any commission,

1 payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does
2 not recommend the purchase or sale of specific securities, and does not have custody of client funds or
3 securities for investment purposes;

4 (iv) a registered broker-dealer whose performance of services described in subsection (9)(a) is
5 solely incidental to the conduct of business and for which the broker-dealer does not receive special
6 compensation;

7 (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or
8 financial publication or service, whether communicated in hard copy form or by electronic means or
9 otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation
10 of each client;

11 (vi) a person whose advice, analyses, or reports relate only to securities exempted by
12 30-10-104(1);

13 (vii) an engineer or teacher whose performance of the services described in subsection (9)(a) is
14 solely incidental to the practice of the person's profession; or

15 (viii) other persons not within the intent of this subsection (9) as the commissioner may by rule or
16 order designate.

17 (10) (a) "Investment adviser representative" means any partner of, officer of, director of, or a
18 person occupying a similar status or performing similar functions, or other individual employed by or
19 associated with an investment adviser, except clerical or ministerial personnel, who:

20 (i) makes any recommendation or otherwise renders advice regarding securities to clients;

21 (ii) manages accounts or portfolios of clients;

22 (iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

23 (iv) supervises employees who perform any of the foregoing.

24 (b) Investment adviser representative does not include a salesperson registered pursuant to
25 30-10-201(1) whose performance of the services described in subsection (10)(a) is solely incidental to the
26 conduct of business as a salesperson and for which the salesperson does not receive special compensation
27 other than fees relating to the solicitation or offering of investment advisory services of a registered
28 investment adviser.

29 (11) "Issuer" means any person who issues or proposes to issue any security, except that with
30 respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to

certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(12) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(13) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

~~(13)~~(14) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

~~(14)~~(15) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

~~(15)~~(16) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

~~(16)~~(a)(17) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

~~(b) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.~~

~~(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as each sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.~~

~~(17)~~(18) "Salesperson" means an individual other than a broker-dealer who represents a

broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition. Salesperson does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

(b) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

~~(19)~~(19) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names ~~as amended before or after July 1, 1961~~.

~~(19)~~(20) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

~~(20)~~(21) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

~~(21)~~(22) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer".

Section 136. Section 30-10-110, MCA, is amended to read:

1 **"30-10-110. Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and
2 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer
3 to buy is made and accepted in this state.

4 (2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to
5 buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

6 (3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not
7 either party is then present in this state, when the offer either originates from this state or is directed by
8 the offeror to this state and received at the place to which it is directed or at any post office in this state
9 in the case of a mailed offer, but for the purpose of 30-10-202, an offer to sell ~~which~~ that is not directed
10 to or received by the offeree in this state is not made in this state.

11 (4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance
12 is communicated to the offeror in this state and acceptance has not previously been communicated to the
13 offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state,
14 whether or not either party is then present in this state, when the offeree directs it to the offeror in this
15 state, reasonably believing the offeror to be in this state, and it is received at the place to which it is
16 directed or at any post office in this state in the case of a mailed acceptance.

17 (5) An offer to sell or to buy is not made in this state when:

18 (a) the publisher circulates or there is circulated on ~~his~~ the publisher's behalf in this state any bona
19 fide newspaper or other publication of general, regular, and paid circulation ~~which~~ that is:

20 (i) not published in this state; or

21 (ii) published in this state but has had more than two-thirds of its circulation outside this state
22 during the past 12 months; or

23 (b) a radio or television program originating outside this state is received in this state.

24 (6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers
25 and investment adviser representatives are concerned, apply when any act instrumental in effecting
26 prohibited conduct is done in this state, whether or not either party is then present in this state.

27 (7) Any security given or delivered with or as a bonus on account of any purchase of securities
28 or any other thing is considered to constitute part of the subject of the purchase and to have been offered
29 and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale
30 or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer.

as well as each sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security."

Section 137. Section 32-1-381, MCA, is amended to read:

"32-1-381. Purpose. (1) The purpose of 32-1-381 through 32-1-384 is to:

(a) authorize interstate banking by the acquisition of existing banks within the framework of the "Douglas amendment" to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 through 1850), as amended;

(b) provide a variety of banking alternatives in Montana in terms of the numbers and ownership of banks; and

(c) conform Montana statutes with the provision of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338, effective September 29, 1994. Any inconsistencies between the provisions of 32-1-381 through 32-1-384 and Public Law 103-328 must be resolved in favor of Public Law 103-328.

(2) Sections 32-1-381 through 32-1-384 do not authorize the establishment of a branch bank in Montana by a bank not located in Montana. Sections 32-1-371 and 32-1-375 do not apply to acquisitions or transactions authorized in 32-1-381 through 32-1-384."

Section 138. Section 32-1-453, MCA, is amended to read:

"32-1-453. Calculation of profits. Interest or commissions unpaid, although due or accrued, on debts owing to any bank ~~shall~~ may not be included in calculation of its profits, unless ~~any~~ the bank ~~shall~~ keep keeps its books on a complete accrual basis in which event ~~any such~~ the bank shall show on its books accrued interest receivable on notes, bonds, and other investments, unless the same ~~shall be~~ is past due ~~as defined by 32-1-452~~, and shall also carry on its books accrued interest, taxes, and expenses payable."

Section 139. Section 32-1-1005, MCA, is amended to read:

"32-1-1005. Bond. Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall file a bond with a court of competent jurisdiction in an amount as the court directs, with sufficient sureties, conditioned on the faithful discharge of its duties as trustee,

guardian, or conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department of commerce, that the capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of a sufficient amount to meet the requirements of 32-1-307(3) for a trust company organized under the laws of this state. The deposit must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under this part. A foreign trust company ~~does~~ is not have required to file a bond or certify the deposit of its capital with respect to a trust, created other than a trust created by a will, if the trust instrument requests or directs that a bond is not required of the trustee."

Section 140. Section 32-3-803, MCA, is amended to read:

"32-3-803. Voting representative -- conflict of interest. (1) Each credit union that is a member of a corporate credit union may designate one person to be its voting representative in the corporate credit union. The person must be designated by the board of directors of the member credit union. The voting representative ~~must be~~ is eligible to hold office in the corporate credit union as if the person were a member of the corporate credit union.

(2) (a) A director, committee member, officer, agent, or employee may not in any manner participate in the deliberation or determination of any question affecting that person's personal pecuniary interest.

(b) A director, officer, agent, or employee may not in any manner participate in the determination of any matter material in amount, as defined by rule by the department, affecting the pecuniary interest of any corporation, partnership, or association, other than the corporate credit union, in which that person has a direct or indirect interest, except for matters involving payment of dividends to the membership.

(3) The department shall adopt rules implementing this section in substantial conformance with Title 12, part 704, Code of Federal Regulations."

Section 141. Section 32-6-102, MCA, is amended to read:

"32-6-102. Electronic funds transfer systems -- applicability. The legislature has determined that electronic funds transfer systems are technologies offered by all types of financial depository institutions. These technologies provide the consumer with both convenience and efficiency in making financial transactions. Regulation E of the federal Electronic Fund Transfer Act (15 U.S.C. 1693, et seq.) addresses

many of the consumer issues relating to these systems. This chapter applies to financial institutions chartered under the United States Code or Title ~~30~~ 32, chapter 1, parts 1 through 5, to the extent that those laws permit."

Section 142. Section 33-2-523, MCA, is amended to read:

"33-2-523. Contracts on or after the operative date of 33-20-213 -- valuation. (1) This section applies to only those policies and contracts issued on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all the policies and contracts issued prior to October 1, 1995, must be the standard provided by the laws in effect prior to October 1, 1995. Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all policies and contracts must be the commissioner's reserve valuation methods defined in 33-2-525, ~~33-2-526(3)~~ 33-2-526(3) and (4), and 33-2-537, 5% interest for group annuity and pure endowment contracts, and 3 1/2% interest for all other policies and contracts or, in the case of life insurance policies and contracts other than annuity and pure endowment contracts issued on or after March 17, 1973, 4% interest for all other policies issued prior to July 1, 1979, 5 1/2% interest for single-premium life insurance policies, and 4 1/2% interest for all other policies issued on or after July 1, 1979, and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies:

(i) the commissioner's 1941 standard ordinary mortality table for policies issued prior to the operative date of 33-20-206, as amended, and the commissioner's 1958 standard ordinary mortality table for policies issued on or after that operative date but prior to January 1, 1989, except that for any category of the policies issued on female risks, modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at the option of the insurer, with the approval of the commissioner, according to an age younger than the actual age of the insured; or

(ii) for policies issued on or after January 1, 1989:

(A) the commissioner's 1980 standard ordinary mortality table;

(B) at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors; or

1 (C) any ordinary mortality table adopted after 1980 by the national association of insurance
2 commissioners that is approved by the commissioner by rule for use in determining the minimum standard
3 of valuation for policies;

4 (b) for all industrial life insurance policies issued on the standard basis, excluding any disability and
5 accidental death benefits in the policies, the 1941 standard industrial mortality table for policies issued prior
6 to the operative date of 33-20-207 and, for policies issued on or after that operative date, the
7 commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after 1980
8 by the national association of insurance commissioners that is approved by the commissioner by rule for
9 use in determining the minimum standard of valuation for the policies;

10 (c) for individual annuity and pure endowment contracts, excluding any disability and accidental
11 death benefits in the policies, the 1937 standard annuity mortality table or, at the option of the insurer, the
12 annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the
13 commissioner;

14 (d) for group annuity and pure endowment contracts, excluding any disability and accidental death
15 benefits in the policies, the group annuity mortality table for 1951, any modification of the table approved
16 by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified
17 for individual annuity and pure endowment contracts;

18 (e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or
19 contracts:

20 (A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement
21 rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with
22 due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after
23 1980 by the national association of insurance commissioners that are approved by the commissioner by
24 rule for use in determining the minimum standard of valuation for the policies;

25 (B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966,
26 either the tables or, at the option of the insurer, the class 3 disability table (1926); and

27 (C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

28 (ii) any table must, for active lives, be combined with a mortality table permitted for calculating the
29 reserves for life insurance policies;

30 (f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

(ii) either table must be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis, and other special benefits, the tables as may be approved by the commissioner."

Section 143. Section 33-2-830, MCA, is amended to read:

"33-2-830. Real estate mortgages. (1) An insurer may invest any of its funds in bonds, notes, or other evidences of indebtedness ~~which that~~ are secured by first mortgages or deeds of trust upon improved real property located in the United States or Canada or ~~which that~~ are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than 21 years, inclusive of the term or terms ~~which that~~ may be provided by enforceable options of renewal, in improved real property located in the United States or Canada. In all cases the security for the loan must be a first lien upon ~~such the~~ real property, and there ~~must~~ may not be any condition or right of reentry or forfeiture not insured against, under which, in the case of real property other than leaseholds, ~~such the~~ lien ~~can~~ may be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan. ~~Nothing herein shall prohibit~~ This section does not prohibit any investment by reason of the existence of any prior lien for ground rents, taxes, assessments, or other similar charges not yet delinquent. This section ~~shall not be deemed~~ may not be considered to prohibit investment in mortgages or similar obligations when made under 33-2-828.

(2) "Improved real ~~estate~~ property" means all farm lands used for tillage, crop, pasture, or timberlands and all real estate on which permanent improvements suitable for residential, institutional, commercial, or industrial use are situated.

(3) (a) ~~No such~~ A mortgage loan or loans made or acquired by an insurer on any one property ~~shall~~

1 may not, at the time of investment by the insurer, exceed the larger of the following amounts as applicable:

2 (i) 80% of the value of the real property or leasehold securing the same, ~~provided, however, or,~~
3 if ~~said~~ the real property or leasehold consists of one- or two-family residential property, 90% of ~~said~~ the
4 value;

5 (ii) the amount of any insurance or guaranty of ~~such~~ the loan by the United States of America or
6 by any agency or instrumentality ~~thereof~~ of the United States; or

7 (iii) the amounts provided in subsection (3)(a)(i), plus the amount by which the excess of ~~such~~ the
8 loan over ~~such~~ the amount is insured or guaranteed by the United States of America or by any agency or
9 instrumentality ~~thereof~~ of the United States.

10 (b) In the case of a purchase money mortgage given to secure the purchase price of real estate sold
11 by the insurer, the amount ~~so~~ loaned or invested ~~shall~~ may not exceed the unpaid portion of the purchase
12 price.

13 (4) ~~No such~~ A mortgage loan or loans ~~shall~~ may not be made or acquired by an insurer except after
14 an appraisal made by a qualified appraiser for the purpose of such an investment.

15 (5) ~~No such~~ A mortgage loan made or acquired by an insurer ~~which that~~ is a participation or a part
16 of a series or issue secured by the same mortgage or deed of trust ~~shall be~~ is not a lawful investment under
17 this section unless the entire series or issue ~~which that~~ is secured by the same mortgage or deed of trust
18 is held by ~~such~~ the insurer or unless the insurer holds a senior participation in ~~such~~ the mortgage or deed
19 of trust, giving it substantially the rights of a first mortgagee.

20 (6) ~~No~~ A mortgage loan upon a leasehold ~~shall~~ may not be made or acquired pursuant to this
21 section unless the terms ~~thereof shall~~ of the loan provide for amortization payments to be made by the
22 borrower on the principal ~~thereof of the loan~~ at least once in each year in amounts sufficient to completely
23 ~~to~~ amortize the loan within a period of four-fifths of the term of the leasehold, inclusive of the term ~~which~~
24 that may be provided by an enforceable option of renewal, ~~which that~~ is unexpired at the time the loan is
25 made, but ~~in no event~~ not exceeding 35 years."

26
27 **Section 144.** Section 33-4-511, MCA, is amended to read:

28 **"33-4-511. Insurance of schools, community houses, and churches.** (1) ~~No~~ A contract of
29 insurance effected upon the property of any school district, rural community house, rural church, or rural
30 public building pursuant to 33-4-501 ~~shall be deemed to~~ does not constitute ~~such~~ the school district or the

owners of ~~any such~~ the community house, church, or public building a member of the insurer.

(2) ~~No~~ A contract of insurance effected upon any rural school building, rural community house, rural church, or other rural public building referred to in 33-4-501(1)(e)(1)(d) ~~shall be~~ is not invalid because the directors or any director or officer of the insurer at the time of effecting the insurance coverage was a trustee, director, insurance producer, custodian, or manager or in any way in control, supervision, or management of any or all of the property ~~so~~ insured."

Section 145. Section 33-10-202, MCA, is amended to read:

"33-10-202. Definitions. As used in this part, the following definitions apply:

(1) "Account" means ~~any either~~ of the ~~three two~~ accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract within the scope of this part under ~~subsections (4) through (6) of 33-10-201~~ (4) through (6).

(5) "Impaired insurer" means:

(a) an insurer ~~which~~ that after July 1, 1974, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or

(b) an insurer considered by the commissioner after July 1, 1974, to be unable or potentially unable to fulfill its contractual obligations.

(6) (a) "Member insurer" means ~~any~~ an insurer that is licensed or that holds a certificate of authority to transact any kind of insurance in this state for which coverage is provided under 33-2-201 and includes any insurer whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn.

(b) The term does not include:

(i) a health service corporation;

(ii) a health maintenance organization;

(iii) a fraternal benefit society;

(iv) a mandatory state pooling plan;

(v) a mutual assessment company or any entity that operates on an assessment basis;

(vi) an insurance exchange; or

(vii) an entity similar to any of the entities listed in subsections (6)(b)(i) through (6)(b)(vi).

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(8) (a) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations on premiums and dividends paid or credited to policyholders on the direct business.

(b) "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers.

(c) As used in 33-10-227, "premiums" are those for the calendar year preceding the determination of impairment.

(9) "Resident" means ~~any~~ a person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

(10) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

Section 146. Section 33-16-1026, MCA, is amended to read:

"33-16-1026. Rate filings. (1) A workers' compensation advisory organization shall file with the commissioner:

(a) workers' compensation rates and rating plans that are limited to prospective loss costs;

(b) each workers' compensation policy form to be used by its members or subscribers;

(c) the uniform classification plan and rules of the advisory organization;

(d) the uniform experience rating plan and rules of the advisory organization; and

(e) any other information that the commissioner requests and is entitled to receive under this part.

(2) Each insurer shall file with the commissioner all rates, supplementary rate information, and any changes and amendments made by it for use in this state as required by the commissioner under 33-16-1027(2).

(3) An insurer may establish rates and supplementary rate information based upon the factors in 33-16-1021. An insurer may adopt by reference, with or without deviation, the prospective loss costs filed by the advisory organization designated under 33-16-1023 or the rates and supplementary rate information

1 filed by another insurer.

2 (4) An insurer may not make or issue a contract or policy of insurance under this part, except in
3 accordance with the filings that are in effect for the insurer as provided in this part.

4 (5) In addition to other prohibitions in this part, an advisory organization may not file rates,
5 supplementary rate information, or supporting information on behalf of an insurer.

6 (6) If each rate in a schedule of workers' compensation rates for specific classifications of risks
7 filed by an insurer is not lower than the prospective loss costs contained in the schedule of workers'
8 compensation rates for those classifications filed by the designated advisory organization under
9 ~~33-16-1026(1)~~ subsection (1), the schedule of rates filed by the insurer is not subject to 33-16-1027(1)
10 but becomes effective upon filing."
11

12 **Section 147.** Section 33-16-1035, MCA, is amended to read:

13 **"33-16-1035. Penalties -- suspension of license.** (1) The commissioner may impose upon a person
14 or organization that violates ~~33-16-1008 or~~ 33-16-1020 through 33-16-1036 a penalty of not more than
15 \$500 for each violation.

16 (2) If the commissioner determines that the violation is willful, the commissioner may impose a
17 penalty of not more than \$1,000 for each violation in addition to any other penalty provided by law.

18 (3) The commissioner may suspend the license of an insurer or an advisory organization that fails
19 to comply with any order within the time set by the order or extension granted by the commissioner. The
20 commissioner may not suspend a license for failure to comply with an order until the time prescribed for
21 appeal from the order has expired or, if appealed, until the order has been affirmed. The commissioner may
22 determine the period of a suspension, which remains in effect for the period unless modified or rescinded
23 or until the order upon which the suspension is based is modified, rescinded, or reversed.

24 (4) Unless a consent decree has been entered, a penalty may not be imposed nor may a license
25 be suspended or revoked unless the commissioner, following a hearing, issues a written order with findings
26 of fact. The hearing must be held at least 10 days after written notice to the person or organization
27 specifying the alleged violation.

28 (5) A party aggrieved by an order or decision of the commissioner may, within 30 days after
29 receiving the commissioner's notice, make a written request for a hearing."
30

1 **Section 148.** Section 33-17-603, MCA, is amended to read:

2 **"33-17-603. Certificate of registration.** (1) Except as provided in 33-17-604, a person may not
3 act as or represent to the public that the person is an administrator in this state unless the person holds
4 a certificate of registration as an administrator.

5 (2) An application for a certificate of registration must be accompanied by a fee of \$100. The
6 commissioner shall issue the certificate unless the commissioner finds that the applicant is not competent,
7 trustworthy, financially responsible, or of good personal and business reputation or that the applicant has
8 had a previous application for a license denied for cause within 5 years.

9 (3) A certificate of registration must be renewed each year by the administrator paying a
10 continuation fee of \$100 on or before July 1. Upon payment, the ~~license~~ certificate continues in force
11 unless suspended, revoked, or otherwise terminated. The commissioner shall deposit the fee with the state
12 treasurer to be credited to the general fund.

13 (4) A certificate of registration may be suspended or revoked if, after notice and hearing, the
14 commissioner finds that the administrator has violated any of the requirements of this part or that the
15 administrator is not competent, trustworthy, financially responsible, or of good personal and business
16 reputation.

17 (5) Unless a certification requirement is waived, a person who acts as an administrator without a
18 certificate of registration is subject to a fine of not less than \$500 or more than \$1,500."

19
20 **Section 149.** Section 33-19-104, MCA, is amended to read:

21 **"33-19-104. Definitions.** As used in this chapter, the following definitions apply:

22 (1) (a) "Adverse underwriting decision" means any of the following actions with respect to
23 insurance transactions involving insurance coverage that are individually underwritten:

24 (i) a declination of insurance coverage;

25 (ii) a termination of insurance coverage;

26 (iii) failure of an insurance producer to apply for insurance coverage with a specific insurance
27 institution ~~which~~ that the insurance producer represents and ~~which~~ that is requested by an applicant;

28 (iv) in the case of a property or casualty insurance coverage:

29 (A) placement by an insurance institution or insurance producer of a risk with a residual market
30 mechanism, an unauthorized insurer, or an insurance institution ~~which~~ that specializes in substandard risks;

1 or

2 (B) the charging of a higher rate on the basis of information that differs from that which the
3 applicant or policyholder furnished;

4 (v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than
5 standard rates.

6 (b) The following actions are not adverse underwriting decisions, but the insurance institution or
7 insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder
8 with the specific reason or reasons for their occurrence:

9 (i) the termination of an individual policy form on a class or statewide basis; or

10 (ii) a declination of insurance coverage solely because ~~such~~ that coverage is not available on a class
11 or statewide basis; or

12 (iii) the rescission of a policy.

13 (2) "Affiliate" or "affiliated" means a person that directly or indirectly through one or more
14 intermediaries controls, is controlled by, or is under common control with another person.

15 (3) "Applicant" means a person who seeks to contract for insurance coverage other than a person
16 seeking group insurance that is not individually underwritten.

17 (4) "Consumer report" means any written, oral, or other communication of information bearing on
18 a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal
19 characteristics, or mode of living ~~which~~ that is used or expected to be used in connection with an insurance
20 transaction.

21 (5) "Consumer reporting agency" means ~~any~~ a person who:

22 (a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer
23 reports for a monetary fee;

24 (b) obtains information primarily from sources other than insurance institutions; and

25 (c) furnishes consumer reports to other persons.

26 (6) "Control", including the terms "controlled by" or "under common control with", means the
27 possession, direct or indirect, of the power to direct or cause the direction of the management and policies
28 of a person, whether through the ownership of voting securities, by contract other than a commercial
29 contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official
30 position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101.

(b) "Insurance institution" does not include insurance producers or insurance-support organizations.

(11) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

(12) (a) "Insurance-support organization" means a person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material

1 misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim
2 activity.

3 (b) The following persons are not insurance-support organizations for purposes of this chapter:
4 insurance producers, government institutions, insurance institutions, medical care institutions, and medical
5 professionals.

6 (13) "Insurance transaction" means a transaction involving insurance primarily for personal, family,
7 or household needs, rather than for business or professional needs, that entails:

8 (a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment;
9 or

10 (b) the servicing of an insurance application, policy, contract, or certificate.

11 (14) "Investigative consumer report" means a consumer report or portion thereof containing
12 information about a natural person's character, general reputation, personal characteristics, or mode of
13 living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances,
14 or others who may have knowledge concerning such items of information.

15 (15) "Medical care institution" means a facility or institution that is licensed to provide health care
16 services to natural persons, including but not limited to health maintenance organizations, home health
17 agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing
18 facilities.

19 (16) "Medical professional" means a person licensed or certified to provide health care services to
20 natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist,
21 nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric
22 social worker, or ~~speech therapist~~ speech-language pathologist.

23 (17) "Medical record information" means personal information that:

24 (a) relates to an individual's physical or mental condition, medical history, or medical treatment;
25 and

26 (b) is obtained from a medical professional or medical care institution, from the individual, or from
27 the individual's spouse, parent, or legal guardian.

28 (18) "Person" means a natural person, corporation, association, partnership, or other legal entity.

29 (19) "Personal information" means any individually identifiable information gathered in connection
30 with an insurance transaction from which judgments can be made about an individual's character, habits,

1 avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics.
2 Personal information includes an individual's name and address and medical record information but does
3 not include privileged information.

4 (20) "Policyholder" means a person who:

- 5 (a) in the case of individual property or casualty insurance, is a present named insured;
6 (b) in the case of individual life, health, or disability insurance, is a present policyowner; or
7 (c) in the case of group insurance that is individually underwritten, is a present group certificate
8 holder.

9 (21) "Pretext interview" means an interview during which a person, in an attempt to obtain
10 information about a natural person, performs one or more of the following acts:

- 11 (a) pretends to be someone ~~he is not~~ else;
12 (b) pretends to represent a person ~~he~~ that the interviewer is not in fact representing;
13 (c) misrepresents the true purpose of the interview; or
14 (d) refuses to ~~identify himself~~ provide identification upon request.

15 (22) "Privileged information" means any individually identifiable information that:

- 16 (a) relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual;
17 and

18 (b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits
19 or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of
20 privileged information under this subsection ~~will be~~ is considered "personal information" under this chapter
21 if it is disclosed in violation of 33-19-306.

22 (23) "Residual market mechanism" means an association, organization, or other entity defined or
23 described in 61-6-144.

24 (24) "Termination of insurance coverage" or "termination of an insurance policy" means either a
25 cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure
26 to pay a premium as required by the policy.

27 (25) "Unauthorized insurer" means an insurance institution that has not been granted a certificate
28 of authority by the commissioner to transact the business of insurance in this state."
29

30 **Section 150.** Section 33-22-703, MCA, is amended to read:

1 **"33-22-703. Coverage for mental illness, alcoholism, and drug addiction.** Insurers, health service
2 corporations, or any employees' health and welfare fund that provides accident and health insurance
3 benefits to residents of this state under group health insurance or group health plans shall provide, for
4 Montana residents covered under hospital and medical expenses incurred insurance group policies and
5 under hospital and medical service plan group contracts, the level of benefits specified in this section for
6 the necessary care and treatment of mental illness, alcoholism, and drug addiction, subject to the right of
7 the applicant to select any alternative level of benefits above the ~~minimum~~ level of benefits described in
8 subsections (1)(c), (2)(a), (2)(c), (2)(d), and (2)(e) as may be offered by the insurer or health service
9 corporation:

10 (1) under basic inpatient expense policies or contracts, inpatient hospital benefits consisting of
11 durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for
12 physical illness generally, except that:

13 (a) inpatient treatment for mental illness, alcoholism, and drug addiction is subject to a maximum
14 yearly benefit of 21 days;

15 (b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial
16 hospitalization through a program that complies with the standards for a partial hospitalization program that
17 are published by the American association for partial hospitalization if the program is operated by a hospital;
18 and

19 (c) inpatient treatment for alcoholism and drug addiction is subject to a maximum benefit of \$4,000
20 in any 24-month period and a maximum lifetime benefit of \$8,000;

21 (2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting
22 of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for
23 physical illness generally, except that:

24 (a) inpatient treatment for mental illness, alcoholism, and drug addiction is subject to a maximum
25 yearly benefit of 21 days;

26 (b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial
27 hospitalization through a program that complies with the standards for a partial hospitalization program that
28 are published by the American association for partial hospitalization if the program is operated by a hospital;

29 (c) inpatient treatment for alcoholism and drug addiction may be subject to a maximum benefit of
30 \$4,000 in any 24-month period and a maximum lifetime benefit of \$8,000;

(d) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than \$2,000; and

(e) outpatient treatment for alcoholism and drug addiction is subject to a maximum yearly benefit of \$1,000."

Section 151. Section 33-22-1108, MCA, is amended to read:

"33-22-1108. Preexisting condition -- definition. (1) A long-term care insurance policy or certificate other than a policy or certificate issued to a group as ~~defined~~ described in 33-22-1107(3)(a)(4)(a) may not use a definition of preexisting condition ~~which~~ that is more restrictive than the definition in 33-22-1107.

(2) A long-term care insurance policy or certificate may not exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within 6 months following the effective date of coverage of an insured person.

(3) The commissioner may extend the limitation periods in subsections (1) and (2) as to specific age group categories in specific policy forms if extending the limitation periods is in the best interests of the public.

(4) An insurer may use an application form designed to elicit the complete health history of an applicant and on the basis of the answers on that application perform underwriting in accordance with the insurer's established underwriting standards. Unless otherwise provided in the long-term care insurance policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subsection (2) expires. A long-term care insurance policy or certificate may not exclude or use a waiver or rider of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (2)."

Section 152. Section 33-22-1521, MCA, is amended to read:

"33-22-1521. Association plan -- minimum benefits. A plan of health coverage must be certified as an association plan if it otherwise meets the requirements of Title 33, chapters 15, 22 (excepting part 7), and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) (a) The minimum benefits for an insured must, subject to the other provisions of this section,

1 be equal to at least 50% of the covered expenses required by this section in excess of an annual deductible
2 that does not exceed \$1,000 per person. The coverage must include a limitation of \$5,000 per person on
3 the total annual out-of-pocket expenses for services covered under this section. Coverage must be subject
4 to a maximum lifetime benefit, but the maximums may not be less than \$100,000.

5 (b) One association plan must be offered with coverage for 80% of the covered expenses provided
6 in this section in excess of an annual deductible that does not exceed \$1,000 per person. This association
7 plan must provide a maximum lifetime benefit of \$500,000.

8 (2) Covered expenses must be the usual and customary charges for the following medically
9 necessary services and articles when prescribed by a physician or other licensed health care professional
10 and when designated in the contract:

11 (a) hospital services;

12 (b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than
13 dental;

14 (c) use of radium or other radioactive materials;

15 (d) oxygen;

16 (e) anesthetics;

17 (f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);

18 (g) services of a physical therapist;

19 (h) transportation provided by licensed ambulance service to the nearest facility qualified to treat
20 the condition;

21 (i) oral surgery for the gums and tissues of the mouth when not performed in connection with the
22 extraction or repair of teeth or in connection with TMJ;

23 (j) rental or purchase of durable medical equipment, which must be reimbursed after the deductible
24 has been met at the rate of 50%, up to a maximum of \$1,000;

25 (k) prosthetics, other than dental;

26 (l) services of a licensed home health agency, up to a maximum of 180 visits per year;

27 (m) drugs requiring a ~~physician's~~ physician's prescription that are approved for use in human beings
28 in the manner prescribed by the United States food and drug administration, covered at 50% of the
29 expense, up to an annual maximum of \$1,000;

30 (n) medically necessary, nonexperimental transplants of the kidney, pancreas, heart, heart/lung,

1 lungs, liver, cornea, and high-dose chemotherapy bone marrow transplantation, limited to a lifetime
2 maximum of \$150,000, with an additional benefit not to exceed \$10,000 for expenses associated with the
3 donor;

4 (o) pregnancy, including complications of pregnancy;

5 (p) newborn infant coverage, as required by 33-22-301;

6 (q) sterilization;

7 (r) immunizations;

8 (s) outpatient rehabilitation therapy;

9 (t) foot care for diabetics;

10 (u) services of a convalescent home, as an alternative to hospital services, limited to a maximum
11 of 60 days per year; and

12 (v) travel, other than transportation by a licensed ambulance service, to the nearest facility qualified
13 to treat the patients medical condition when approved in advance by the insurer.

14 (3) (a) Covered expenses for the services or articles specified in this section do not include:

15 (i) home and office calls, except as specifically provided in subsection (2);

16 (ii) rental or purchase of durable medical equipment, except as specifically provided in subsection
17 (2);

18 (iii) the first \$20 of diagnostic x-ray and laboratory charges in each 14-day period;

19 (iv) oral surgery, except as specifically provided in subsection (2);

20 (v) that part of a charge for services or articles that exceeds the prevailing charge in the locality
21 where the service is provided; or

22 (vi) care that is primarily for custodial or domiciliary purposes that would not qualify as eligible
23 services under medicare.

24 (b) Covered expenses for the services or articles specified in this section do not include charges
25 for:

26 (i) care or for any injury or disease ~~either~~ arising out of an injury in the course of employment and
27 subject to a workers' compensation or similar law, for which benefits are payable under another policy of
28 disability insurance or medicare;

29 (ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or
30 congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition, except as provided by subsection (2);

(iv) confinement in a private room to the extent that it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician;

(v) services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles;

(vi) room and board for a nonemergency admission on Friday or Saturday;

(vii) routine well baby care;

(viii) complications to a newborn, unless no other source of coverage is available;

(ix) reversal of sterilization;

(x) abortion, unless the life of the mother would be endangered if the fetus were carried to term;

(xi) weight modification or modification of the body to improve the mental or emotional well-being of an insured;

(xii) artificial insemination or treatment for infertility; or

(xiii) breast augmentation or reduction."

Section 153. Section 33-31-311, MCA, is amended to read:

"33-31-311. Insurance producer license required -- application, issuance, renewal, fees -- penalty.

(1) ~~No~~ An individual, partnership, or corporation may not act as or ~~hold himself out to be~~ represent to the public that the individual, partnership, or corporation is an insurance producer of a health maintenance organization unless ~~he~~ the individual, partnership, or corporation is:

(a) licensed as a disability insurance producer by the commissioner pursuant to chapter 17, parts 1, 2, and 4 of this title or licensed as an insurance producer ~~under~~ as provided in 33-30-311 through 33-30-313; and

(b) appointed or authorized by the health maintenance organization to solicit health care service agreements on its behalf.

(2) Application, appointment, and qualification for a health maintenance organization insurance producer license, fees applicable to and the issuance of a health maintenance organization insurance producer license, and renewal of a health maintenance organization insurance producer license must be in

accordance with the provisions of chapter 17 that apply to a disability insurance producer.

(3) An individual, partnership, or corporation who holds a disability insurance producer license on October 1, 1987, need not requalify by an examination to be licensed as a health maintenance organization insurance producer.

(4) The commissioner may, in accordance with 33-1-313, 33-1-317, 33-17-411, and chapter 17, part 10, suspend, revoke, refuse to issue or renew a health maintenance organization insurance producer license, or impose a fine upon the licensee."

Section 154. Section 35-1-933, MCA, is amended to read:

"35-1-933. Articles of dissolution. (1) (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state, for filing, articles of dissolution setting forth:

~~(a)(i)~~ the name of the corporation;

~~(b)(ii)~~ the date dissolution was authorized; and

~~(c)(iii)~~ if dissolution was approved by the shareholders:

~~(i)(A)~~ the number of votes entitled to be cast on the proposal to dissolve; and

~~(ii)(B)~~ either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval; and,

~~(d)(b)~~ if ~~if~~ voting by voting groups is required, the information required by subsection ~~(1)(c)~~ (1)(a)(iii) must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(2) A corporation is dissolved upon the effective date of its articles of dissolution."

Section 155. Section 35-1-934, MCA, is amended to read:

"35-1-934. Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days of the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholders' action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted on action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, the information required by 35-1-933~~(1)(e) or (1)(d)~~(1)(a)(iii) or (1)(b).

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the corporation resumes carrying on its business as if dissolution had never occurred."

Section 156. Section 35-1-1107, MCA, is amended to read:

"35-1-1107. Inspection of records by shareholders. (1) Subject to 35-1-1108(3), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in 35-1-1106(5) if the shareholder gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) excerpts from minutes of any meeting of the board of directors, records of any action of a

committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under ~~35-1-1107(1)~~ subsection (1);

(b) accounting records of the corporation; and

(c) the record of shareholders.

(3) A shareholder may inspect and copy the records identified in subsection (2) only if:

(a) the demand is made in good faith and for a proper purpose;

(b) the shareholder describes with reasonable particularity the purpose and the records the shareholder desires to inspect;

(c) the records are directly connected with ~~his~~ the shareholder's purpose; and

(d) the shareholder has been a shareholder of record for at least 6 months preceding the demand or the shareholder is a holder of record of at least 5% of all the outstanding shares of the corporation.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) the right of a shareholder to inspect records under 35-1-523 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of this chapter, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on ~~his~~ the shareholder's behalf."

Section 157. Section 37-25-305, MCA, is amended to read:

"37-25-305. Representation to public as nutritionist -- limitation on use of title. ~~No~~ A person may not represent ~~himself~~ to the public by any title, sign, or advertisement or description of services as that the person is a nutritionist or a licensed nutritionist unless ~~he~~ the person has been licensed under this chapter or has met the requirements of 37-25-102(10)(b)(9)(b)."

Section 158. Section 37-29-302, MCA, is amended to read:

1 **"37-29-302. Exceptions.** The provisions of this chapter do not apply to:

2 (1) a person interning under the direct supervision of a licensed denturist as required by
3 37-29-303(2), provided that ~~no~~ a denturist may not supervise more than one ~~such person~~ intern at any one
4 time;

5 (2) the practice of dentistry or medicine by persons authorized to do so by the state of Montana;
6 or

7 (3) a student of denturistry in pursuit of clinical studies under a school program or internship as
8 required by 37-29-303(2)."

9
10 **Section 159.** Section 37-29-305, MCA, is amended to read:

11 **"37-29-305. Examinations.** The board shall administer the examinations for licensure, subject to
12 the following requirements:

13 (1) Examinations must be of ~~such a character as to determine~~ that determines the qualifications,
14 fitness, and ability of the applicant to practice denturistry. The form of the test must include written and oral
15 examinations and a practical demonstration of skills.

16 (2) Examinations must be held at least annually on the second Monday in July. An applicant must
17 obtain an average percentage score of 75% or better to qualify for licensure. The written and practical
18 examinations ~~shall~~ must carry equal weight. The oral examination results may adjust an average score only
19 two percentage points.

20 (3) The written examination must include coverage of the following subjects:

21 (a) head and oral anatomy and physiology;

22 (b) oral pathology;

23 (c) partial denture construction and design;

24 (d) microbiology;

25 (e) radiology;

26 (f) clinical dental technology;

27 (g) dental laboratory technology;

28 (h) asepsis;

29 (i) clinical jurisprudence;

30 (j) medical emergencies.

1 (4) Applicants who fail to score a 75% average on the written and practical examinations may,
2 upon payment of the appropriate fee, have a second opportunity to take the written or practical
3 examinations, or both, ~~provided that all applicants under 37-29-303(1) are examined on or before April 1,~~
4 ~~1985."~~

5
6 **Section 160.** Section 39-3-406, MCA, is amended to read:

7 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect
8 to:

9 (a) students participating in a distributive education program established under the auspices of an
10 accredited educational agency;

11 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,
12 mowing lawns, and cleaning sidewalks;

13 (c) persons employed directly by the head of a household to care for children dependent upon the
14 head of the household;

15 (d) immediate members of the family of an employer or persons dependent upon an employer for
16 half or more of their support in the customary sense of being a dependent;

17 (e) ~~any persons~~ who are not regular employees of a nonprofit organization and who voluntarily offer
18 their services to a nonprofit organization on a fully or partially reimbursed basis;

19 (f) handicapped workers engaged in work that is incidental to training or evaluation programs or
20 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

21 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
22 30 days of their employment;

23 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
24 may not exceed 180 days from their initial date of employment and further provided that during this
25 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established
26 in this part;

27 (i) retired or semiretired persons performing part-time incidental work as a condition of their
28 residence on a farm or ranch;

29 (j) any individual employed in a bona fide executive, administrative, or professional capacity ^{as}
30 these terms are defined by regulations of the commissioner;

1 (k) any individual employed by the United States of America;

2 (l) resident managers employed in lodging establishments or personal care facilities who, under the
3 terms of their employment, live in the establishment or facility;

4 (m) an outside salesperson or marketing representative paid on a commission, contract, or salary
5 basis who is primarily employed in selling or marketing products or services in the food distribution industry
6 for a food broker, wholesaler, or association;

7 (n) a direct seller as defined in 26 U.S.C. 3508.

8 (2) The provisions of 39-3-405 do not apply to:

9 (a) an employee with respect to whom the United States secretary of transportation has power to
10 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. ~~304~~ 31502;

11 (b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions
12 of part I of the Interstate Commerce Act;

13 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or
14 natural state;

15 (d) an outside salesperson paid on a commission or contract basis who is primarily employed in
16 selling advertising for a newspaper;

17 (e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
18 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements
19 if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily
20 engaged in the business of selling the vehicles or implements to ultimate purchasers;

21 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
22 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
23 or aircraft to ultimate purchasers;

24 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in
25 selling office supplies, computers, or other office equipment for an office equipment dealer;

26 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling
27 advertising for a radio or television station employer;

28 (i) an employee employed as a driver or driver's helper making local deliveries who is compensated
29 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that
30 the plan has the general purpose and effect of reducing hours worked by the employees to or below the

1 maximum workweek applicable to them under 39-3-405;

2 (j) an employee employed in agriculture or in connection with the operation or maintenance of
3 ditches, canals, reservoirs, or waterways that are not owned or operated for profit, ~~and that are~~ not
4 operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural
5 purposes;

6 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
7 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
8 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

9 (i) primarily employed during a workweek in agriculture by a farmer; and

10 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less
11 than that prescribed by 39-3-404;

12 (l) an employee of an establishment commonly recognized as a country elevator, including an
13 establishment that sells products and services used in the operation of a farm, if no more than five
14 employees are employed by the establishment;

15 (m) a driver employed by an employer engaged in the business of operating taxicabs;

16 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
17 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
18 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
19 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
20 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
21 basis, at an annual rate of not less than \$10,000;

22 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
23 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
24 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
25 not exceed eight;

26 (p) an employee of a sheriff's department who is working under an established work period in lieu
27 of a workweek pursuant to 7-4-2509(1);

28 (q) an employee of a municipal or county government who is working under a work period not
29 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a
30 collective bargaining unit represents the employee or by mutual agreement of the employer and employee

when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town."

Section 161. Section 39-8-207, MCA, is amended to read:

"39-8-207. Requirements of licensee. (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;

(b) a statement providing that the professional employer organization or group:

1 (i) reserves a right of direction and control over employees assigned to the client's location. The
2 client may retain sufficient direction and control over employees necessary to conduct business and without
3 which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with
4 state licensing laws.

5 (ii) assumes responsibility for the payment of wages of employees, workers' compensation
6 premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments
7 by the client; and

8 (iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
9 to accept or cancel the assignment of an employee.

10 (c) a statement that, with respect to a worker supplied to a client by a professional employer
11 organization or group, the client shares joint and several liability for any wages, workers' compensation
12 premiums, and payroll-related taxes, and for any benefits left unpaid by the professional employer
13 organization or group and that, in the event that the licensee's license is suspended or revoked, this liability
14 is retroactive to the client's entering into a contract with the licensee; and

15 (d) a statement that the client is responsible for compliance with the Montana Safety Culture Act,
16 Title 39, chapter 71, part 15.

17 (2) The professional employer organization or group shall:

18 (a) give written notice of the general nature of the relationship between the professional employer
19 organization or group and the client to each employee assigned to perform services at the client's place of
20 work. The disclosure must provide that the professional employer organization:

21 (i) reserves a right of direction and control over employees assigned to the client's location. The
22 client may retain sufficient direction and control over employees necessary to conduct business and without
23 which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with
24 state licensing laws.

25 (ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
26 to accept or cancel the assignment of an employee.

27 (b) submit to the department, within 90 days of the end of each calendar quarter, information
28 certified by an independent certified public accountant demonstrating that all payroll-related taxes for the
29 quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for
30 each quarter.

1 (c) maintain and make available for the department or its agent all records relating to the licensee's
2 business conduct. Records must be maintained for 5 years after terminating an employee leasing
3 arrangement or professional employer arrangement.

4 (d) notify the department in writing within 20 days of a change of business address or a change
5 in partners, directors, officers, members, or controlling persons designated in the license;

6 (e) notify the department in writing within 20 days after a client either commences or terminates
7 a professional employer arrangement or an employee leasing arrangement with that professional employer
8 organization or group; and

9 (f) post the license issued in a conspicuous place in the principal place of business and display, in
10 clear public view in each licensee's office, a notice stating that the professional employer organization or
11 group is licensed and regulated by the department.

12 (3) When a professional employer organization or group uses a professional employer arrangement
13 with the client, both the professional employer organization or group and the client are the immediate
14 employers of the workers subject to the arrangement for the purposes of the workers' compensation laws
15 of this state. When a professional employer organization or group uses an employee leasing arrangement
16 with the client, the professional employer organization or group is the immediate employer of the workers
17 subject to the arrangement for the purposes of the workers' compensation laws of this state.

18 (4) A professional employer organization or group shall:

19 (a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

20 (b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all
21 records and documents required of employers under the unemployment insurance laws of this state. For
22 unemployment reporting purposes, each professional employer organization is the employing unit, as
23 defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its
24 clients.

25 (c) provide workers' compensation coverage for all employees and provide, maintain, and secure
26 all records and documents required of employers under the workers' compensation laws of this state. A
27 license may not be issued to a professional employer organization or group until the department receives
28 proof of workers' compensation coverage for all employees assigned to any client location in this state.

29 (5) A professional employer organization or group is the employer for sponsoring and maintaining
30 employee benefit and welfare plans. The plans, if limited to employees of the professional employer

organization or group, are not multiple employer welfare arrangements.

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees.

The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

(d) the policy limits on each insurance policy; and

(e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001, et seq.), as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of this chapter. Subject to the provisions of this chapter, a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:

(a) the client employer's corporate or business name;

(b) the client employer's taxpayer or employer identification number;

(c) the client employer's risk identification number;

(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and

(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to this chapter does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee welfare benefit ~~program plan~~ as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is exempt under 33-17-103(4).

(12) A sole proprietor or a working member of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515."

Section 162. Section 39-29-101, MCA, is amended to read:

1 **"39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

2 (1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except
3 for training, determining physical fitness, or service in the reserve or national guard.

4 (2) "Armed forces" means the United States:

5 (a) army, navy, air force, marine corps, and coast guard; and

6 (b) merchant marine for service recognized by the United States department of defense as active
7 military service for the purpose of laws administered by the department of veterans affairs.

8 (3) "Disabled veteran" means a person:

9 (a) whether or not the person is a veteran as defined in this section, who was separated under
10 honorable conditions from active duty in the armed forces and has established the present existence of a
11 service-connected disability or is receiving compensation, disability retirement benefits, or pension because
12 of a law administered by the department of veterans affairs or a military department; or

13 (b) who has received a purple heart medal.

14 (4) "Eligible relative" means:

15 (a) the unmarried surviving spouse of a veteran or disabled veteran;

16 (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

17 (c) the mother of a veteran who died under honorable conditions while serving in the armed forces

18 if:

19 (i) the mother's spouse is totally and permanently disabled; or

20 (ii) the mother is the widow of the father of the veteran and has not remarried;

21 (d) the mother of a service-connected permanently and totally disabled veteran if:

22 (i) the mother's spouse is totally and permanently disabled; or

23 (ii) the mother is the widow of the father of the veteran and has not remarried.

24 (5) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a
25 state position or a similar permanent, temporary, or seasonal position with a public employer other than the
26 state. The term does not include:

27 (a) a state or local elected office;

28 (b) appointment by an elected official to a body such as a board, commission, committee, or
29 council;

30 (c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training; or

(b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C. 672(a), (d), or (g) 12301(a), (d), or (g), 10 U.S.C. ~~673~~ 12302, or 10 U.S.C. ~~673b~~ 12304 served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions."

Section 163. Section 39-51-307, MCA, is amended to read:

"39-51-307. Department to create employment service. (1) The department shall establish and maintain free public employment offices in ~~such~~ the number and in ~~such~~ places ~~as that~~ as may be necessary for the proper administration of this chapter and for the purpose of performing ~~such the~~ the duties ~~as that~~ as are within the purview of the act of congress entitled, "An act to provide for the establishment of a national

employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 (~~48 Stat. 113; U.S.C. Title 29, Sec. 49 (a)~~) (29 U.S.C. 49), as amended.

(2) The department ~~shall be~~ is charged with the duty to cooperate with any official or agency of the United States having power or duties under the provisions of the act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the act of congress, as amended, in the promotion and maintenance of a system of public employment offices.

(3) The provisions of the act of congress, as amended, are ~~hereby~~ accepted by this state in conformity with section 4 of ~~said~~ that act, and this state ~~will~~ shall observe and comply with the requirements ~~thereof of the act~~. The department is ~~hereby~~ designated and constituted the agency of this state for the purpose of ~~said~~ the act.

(4) For the purpose of establishing and maintaining free public employment offices, the department is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization, and as a part of ~~any~~ such an agreement, the department may accept money, services, or quarters as a contribution to the employment service account."

Section 164. Section 39-51-401, MCA, is amended to read:

"39-51-401. Unemployment insurance fund -- establishment and control. There is ~~hereby~~ established separate and apart from all public money or funds of this state a fund in the expendable trust fund type known as the unemployment insurance fund, which ~~shall~~ must be administered by the department exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in this code means the unemployment insurance expendable trust fund. All money in the fund ~~shall~~ must be mingled and undivided. This fund ~~shall consist~~ consists of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to ~~section~~ sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended."

1 **Section 165.** Section 39-51-402, MCA, is amended to read:

2 **"39-51-402. Unemployment insurance fund -- custodian -- accounts and deposits.** (1) The

3 commissioner of labor and industry is the ex officio treasurer and custodian of the unemployment insurance
4 fund and shall administer ~~such~~ that fund in accordance with this chapter. ~~He~~ The commissioner shall
5 maintain within the fund three separate accounts:

6 (a) a clearing account;

7 (b) an unemployment trust fund account; and

8 (c) a benefit account.

9 (2) All money payable to the unemployment insurance fund, upon receipt by the department, must
10 be immediately deposited in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid
11 from the clearing account. After clearance ~~thereof~~, all other money in the clearing account must be
12 immediately deposited with the secretary of the treasury of the United States to the credit of the account
13 of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the
14 Social Security Act (42 U.S.C. 1104), as amended.

15 (3) The benefit account consists of all money requisitioned for the payment of benefits from this
16 state's account in the unemployment trust fund.

17 (4) Except as ~~herein~~ otherwise provided, money in the clearing and benefit accounts may be
18 deposited in any bank or public depository in which general funds of the state may be deposited, but ~~no~~
19 a public deposit insurance charge or premium may not be paid out of the unemployment insurance fund."
20

21 **Section 166.** Section 39-51-403, MCA, is amended to read:

22 **"39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of**
23 **benefits -- exception.** (1) Money ~~shall~~ must be requisitioned from this state's account in the unemployment
24 trust fund solely for the payment of benefits and in accordance with regulations prescribed by the
25 department, except that money credited to this state's account pursuant to ~~section~~ sections 903 and 904
26 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, may also be withdrawn for the
27 payment of expenses for the administration of this chapter and of public employment offices, as provided
28 by this chapter.

29 (2) The department shall from time to time requisition from the unemployment trust fund ~~such~~
30 amounts, not exceeding the amounts standing to this state account ~~therein~~, as it ~~deems~~ considers

1 necessary for the payment of benefits for a reasonable future period. Upon receipt ~~thereof~~ of the money,
2 the treasurer shall deposit ~~such the~~ money in the benefit account and shall issue ~~his~~ warrants for the
3 payment of benefits solely from ~~such the~~ benefit account.

4 (3) Expenditures of ~~such~~ money in the benefit account and refunds from the clearing account ~~shall~~
5 are not ~~be~~ subject to any provisions of law requiring specific appropriations or other formal release by state
6 officers of money in their custody.

7 (4) Any balance of money requisitioned from the unemployment trust fund ~~which that~~ remains
8 unclaimed or unpaid in the benefit account after the expiration of the period for which ~~such the~~ sums were
9 requisitioned ~~shall either~~ must be deducted from estimates for and may be ~~utilized~~ used for the payment
10 of benefits during succeeding periods or, in the discretion of the department, ~~shall~~ must be redeposited with
11 the secretary of the treasury of the United States to the credit of this state's account in the unemployment
12 trust fund, as provided in 39-51-402."

13
14 **Section 167.** Section 39-51-404, MCA, is amended to read:

15 **"39-51-404. Administrative expenses.** (1) Money credited to the account of this state in the
16 unemployment trust fund by the secretary of the treasury of the United States pursuant to ~~section~~ sections
17 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, may be requisitioned and
18 used for the payment of expenses incurred for the administration of this chapter pursuant to a specific
19 appropriation by the legislature if the expenses are incurred and the money is requisitioned after the
20 enactment of an appropriation law that:

21 (a) specifies the purposes for which the money is appropriated and the amounts appropriated;

22 (b) limits the period within which the money may be expended to a period ending not more than
23 2 years after the date of the enactment of the appropriation law; and

24 (c) limits the amount that may be used during any 12-month period beginning on July 1 and ending
25 on the next June 30 to an amount not exceeding the amount by which the aggregate of the amounts
26 credited to the account of this state pursuant to ~~section~~ sections 903 and 904 of the Social Security Act
27 (42 U.S.C. 1103 and 1104), as amended, during the same 12-month period and the 34 preceding 12-month
28 periods exceeds the aggregate of the amounts used pursuant to this section and charged against the
29 amounts credited to the account of this state during any of the 35 12-month periods.

30 (2) For the purposes of this section, amounts used during any 12-month period must be charged

1 against equivalent amounts that were first credited and that are not already charged, except that an amount
2 used for administration during any 12-month period may not be charged against any amount credited during
3 a 12-month period earlier than the 34th preceding period. Money requisitioned for the payment of expenses
4 of administration pursuant to this section must be deposited in the unemployment insurance administration
5 account but, until expended, must remain a part of the unemployment insurance fund.

6 (3) The department shall maintain a separate record of the deposit, obligation, expenditure, and
7 return of funds deposited. If any money deposited is for any reason not to be expended for the purpose for
8 which it was appropriated or if it remains unexpended at the end of the period specified by the law
9 appropriating the money, it must be withdrawn and returned to the secretary of the treasury of the United
10 States for credit to this state's account in the unemployment trust fund.

11 (4) An assessment equal to ~~1%~~ 0.1% of all taxable wages provided for in 39-51-1108 and ~~.05%~~
12 0.05% of total wages paid by employers not covered by an experience rating must be levied against and
13 paid by all employers. All assessments and investment income must be deposited in the employment
14 security account provided for in 39-51-409."

15
16 **Section 168.** Section 39-51-407, MCA, is amended to read:

17 **"39-51-407. Reimbursement of fund by state.** This state recognizes its obligation to replace, and
18 ~~hereby~~ pledges the faith of this state that funds will be provided in the future and applied to the
19 replacement of any of the money received from the United States or any agency ~~thereof~~ of the United
20 States under Title III of the Social Security Act (now Subchapter III), any unencumbered balances in the
21 unemployment insurance administration account, any money granted to this state pursuant to the provisions
22 of the Wagner-Peyser Act (29 U.S.C. 49, et seq.), and any money made available by the state or its
23 political subdivisions and matched by ~~such~~ money granted to this state pursuant to the provisions of the
24 Wagner-Peyser Act ~~which that~~ the secretary of labor finds have, because of any action or contingency,
25 been lost or have been expended for purposes other than or in amounts in excess of those found necessary
26 by the secretary of labor for the proper administration of this chapter. ~~Such~~ The money ~~shall~~ must be
27 promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the
28 department and used only for purposes approved by the secretary of labor. The department shall, if
29 necessary, promptly report to the governor and the governor to the legislature, by a letter to the speaker
30 of the house of representatives and the president of the senate, the amount required for ~~such~~ replacement

1 of the money."

2
3 **Section 169.** Section 39-51-501, MCA, is amended to read:

4 **"39-51-501. State-federal cooperation.** (1) In the administration of this chapter, the department
5 shall:

6 (a) cooperate to the fullest extent consistent with the provisions of this chapter with the secretary
7 of labor, pursuant to the provisions of the Social Security Act, as amended;

8 (b) make ~~such~~ reports in ~~such a~~ form and containing ~~such the~~ information ~~as that~~ the secretary of
9 labor may ~~from time to time~~ require and shall comply with ~~such the~~ provisions ~~as that~~ the secretary of labor
10 may ~~from time to time~~ find necessary to ~~assure~~ ensure the correctness and verification of ~~such the~~ reports;
11 and

12 (c) comply with the regulations prescribed by the secretary of labor governing the expenditures of
13 ~~such the~~ sums ~~as may be that are~~ allotted and paid to this state under Title III of the Social Security Act
14 (now Subchapter III), as amended, for the purpose of assisting in the administration of this chapter.

15 (2) The department shall cooperate with the secretary of labor in the administration of any act of
16 congress establishing unemployment insurance benefits or similar benefits for federal employees and
17 veterans or ex-service personnel of the armed forces of the United States and shall do so in ~~such a~~ manner
18 ~~as may be deemed~~ considered advisable and expedient in order to carry out the purpose of this chapter.

19 (3) The department is ~~hereby~~ authorized ~~and empowered~~ to perform any ~~and all~~ acts, including the
20 execution of agreements and contracts ~~which that~~ may be required under and pursuant to any act passed
21 by the congress of the United States, authorizing the extension of unemployment insurance benefits by
22 federal law if the department in its discretion ~~deems~~ considers it advisable to perform such acts.

23 (4) Upon request ~~therefor~~, the department shall furnish to any agency of the United States charged
24 with the administration of public works or assistance through public employment the name, address,
25 ordinary occupation, and employment status of each recipient of benefits and ~~such the~~ recipient's rights
26 to further benefits under this chapter."
27

28 **Section 170.** Section 39-51-503, MCA, is amended to read:

29 **"39-51-503. Agreements with railroad retirement board.** The department is ~~hereby~~ authorized to
30 cooperate with and enter into agreements with the railroad retirement board with respect to establishment,

1 maintenance, and use of employment service facilities and to make available to the railroad retirement board
 2 the records of the department relating to employer's status and contributions received from employers
 3 covered by the Railroad Unemployment Insurance Act (45 U.S.C. 351, et seq.), together with employee
 4 wage records and ~~such~~ other data as that the railroad retirement board ~~may deem~~ considers necessary or
 5 desirable for the administration of the Railroad Unemployment Insurance Act (~~52 Stat. 1094~~). Any money
 6 received by the department from the railroad retirement board or any other governmental agency with
 7 respect to the establishment, maintenance, and use of employment service facilities ~~shall~~ must be paid into
 8 and credited to the proper division of the unemployment insurance administration fund set up and
 9 established under 39-51-406 and 39-51-407."

11 **Section 171.** Section 39-51-1110, MCA, is amended to read:

12 **"39-51-1110. Refunds to employers.** (1) If not later than 3 years after the date on which any
 13 taxes or interest ~~thereon~~ on the taxes became due or not later than 1 year from the date on which payment
 14 was made, whichever is later, an employer who has paid ~~such~~ taxes or interest ~~thereon~~ on the taxes ~~shall~~
 15 ~~make application~~ applies for an adjustment ~~thereof~~ of the taxes or interest in connection with subsequent
 16 tax payments or applies for a refund ~~thereof~~ of the taxes or interest because ~~such~~ an adjustment cannot
 17 be made and if the department ~~shall determine~~ determines that ~~such the~~ taxes or interest or any portion
 18 ~~thereof~~ of the taxes or interest was erroneously collected, the department shall allow ~~such the~~ employer
 19 to make an adjustment ~~thereof~~, without interest, in connection with subsequent tax payments by ~~him~~ the
 20 taxpayer ~~or, if such.~~ If an adjustment cannot be made, the department shall refund ~~said the~~ amount,
 21 without interest, from the fund. For like cause and within the same period, an adjustment or refund may
 22 be ~~so~~ made on the department's own initiative.

23 (2) If the department ~~shall determine~~ determines that an employer has paid taxes to this state under
 24 this chapter when ~~such the~~ taxes should have been paid to another state under a similar act of ~~such the~~
 25 other state, transfer of ~~such the~~ taxes to ~~such the~~ other state ~~shall~~ must be made upon discovery or, upon
 26 proof of payment that ~~such the~~ other state has been fully paid, ~~then a~~ refund to ~~such the~~ employer ~~shall~~
 27 must be made ~~at any time~~ upon application without limitation of time.

28 (3) In the event that this chapter is not certified by the secretary of labor under ~~section 1603~~ of
 29 the Internal Revenue Code, 26 U.S.C. 3304, as amended, ~~1939~~, for any year, then ~~and in that event~~
 30 refunds ~~shall~~ must be made of all taxes required under this chapter from employers for that year."

1 **Section 172.** Section 39-51-1304, MCA, is amended to read:

2 **"39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including
3 penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, or
4 against the liable corporate officer or employee or liable member or manager of a limited liability company
5 referred to in 39-51-1105, arising at the time that the payments are due. The department may issue a
6 certificate stating the amount of payments due and directing the clerk of the district court of any county
7 of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that
8 the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the
9 due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce
10 the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed
11 for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent
12 authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the
13 creation of the lien or the effective date of the lien, whichever is later.

14 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period
15 pursuant to the ~~provisions of~~ methods provided in 25-13-102.

16 (3) The lien provided for in subsection (1) is not valid against any third party owning an interest
17 in real or personal property against which the judgment is enforced if:

18 (a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

19 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating
20 that all taxes, penalties, and interest due from the grantor have been paid.

21 (4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204
22 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed
23 against the employer, liable corporate officer or employee, or liable member or manager of a limited liability
24 company referred to in 39-51-1105 under 39-51-1303 or this section, or both, to collect the delinquent
25 taxes, penalties, and interest.

26 (5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid
27 taxes, penalties, and accumulated interest. The department may release or may partially release the lien
28 upon partial payment or whenever the department determines that the release or partial release of the lien
29 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if
30 it determines that the lien is unenforceable."

Section 173. Section 39-51-2106, MCA, is amended to read:

"39-51-2106. Certain wages not to be used in determining benefit eligibility or amount. Wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (~~52 Stat. 1094~~) (45 U.S.C. 351, et seq.) or for services performed for an employer as defined in ~~said that act shall~~ are not be included for the purposes of determining eligibility or weekly benefit amount under this chapter."

Section 174. Section 39-51-2110, MCA, is amended to read:

"39-51-2110. Payment of benefits to aliens. (1) Benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of ~~section 212(d)(5)~~ of the Immigration and Nationality Act, 8 U.S.C. 1152.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to the individuals because of the individuals' alien status must be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, a determination that benefits to the individual are not payable because of the individual's alien status may not be made except upon a preponderance of the evidence."

Section 175. Section 39-51-2508, MCA, is amended to read:

"39-51-2508. Eligibility requirements for extended benefits -- disqualifications -- acceptance of suitable work. (1) An individual is eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds with respect to the week that the individual:

(a) is an exhaustee, as defined in 39-51-2501;

(b) has been paid total wages for employment in the base period, as defined in 39-51-201, in an amount not less than:

(i) 1.5 times the wages earned in the calendar quarter in which wages were the highest during the

1 base period;

2 (ii) 40 times the individual's most recent weekly benefit amount; or

3 (iii) insured wages for 20 weeks of work;

4 (c) is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if
5 disqualified, the individual satisfies the requirements for requalification in that part; and

6 (d) has satisfied the other requirements of this chapter for the receipt of regular benefits that are
7 applicable to individuals claiming extended benefits.

8 (2) In addition to the disqualifications provided for in subsection (1)(c), an individual is disqualified
9 for extended benefits if the individual fails to seek work. The disqualification continues for the week in
10 which the failure occurs and until the individual has performed services, other than self-employment, for
11 which remuneration is received equal to or in excess of the individual's weekly benefit amount in 4 separate
12 weeks subsequent to the date the act causing the disqualification occurred.

13 (3) A regular benefit claimant who is disqualified for gross misconduct under 39-51-2303(2) may
14 not be paid extended benefits unless the individual has earned at least eight times the weekly benefit
15 amount after the date of the disqualification.

16 (4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to
17 39-51-2302(3), requalifies for regular benefits may not be paid extended benefits unless the individual has
18 earned at least six times the weekly benefit amount.

19 (5) For the purposes of determining eligibility for extended benefits, the department shall by rule
20 define the term "suitable work". The definition must be in accordance with the definition required by the
21 ~~Omnibus Reconciliation Act of 1980, Public Law 96-499, and as may be amended after March 10, 1981~~
22 requirements of 26 U.S.C. 3304."

23

24 **Section 176.** Section 39-51-2602, MCA, is amended to read:

25 **"39-51-2602. Approved training under federal programs.** (1) Notwithstanding any other provisions
26 of this chapter, ~~no~~ an otherwise eligible individual may not be denied benefits for any week:

27 (a) because of participation in training approved under Section 236(a)(1) of the federal Trade Act
28 of 1974 (19 U.S.C. 2296) or under Title III of the federal Job Training Partnership Act (29 U.S.C. 1501
29 et seq.);

30 (b) because of participation in approved training described in subsection (1)(a) by reason of leaving,

1 work to enter the training if the work left is not suitable employment; or

2 (c) because of the application to any such week in training of provisions in this chapter or any
3 federal unemployment insurance law administered by this agency, relating to availability for work, active
4 search for work, or refusal to accept work.

5 (2) For purposes of this section, "suitable employment" means work of a substantially equal or
6 higher skill level than the individual's past adversely affected employment, as defined for purposes of the
7 federal Trade Act of 1974 and the federal Job Training Partnership Act, and for which the wages are not
8 less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade
9 Act of 1974 and the federal Job Training Partnership Act."

10
11 **Section 177.** Section 39-51-3106, MCA, is amended to read:

12 **"39-51-3106. Child support interception of unemployment benefits.** (1) For purposes of this
13 section, the following definitions apply:

14 (a) "Child support obligations" includes only obligations that are being enforced pursuant to a plan
15 described in section 454 of the Social Security Act ~~which~~ (42 U.S.C. 654) that has been approved by the
16 secretary of health and human services under Part D of Title IV of the Social Security Act (now Subchapter
17 IV).

18 (b) "State or local child support enforcement agency" means any agency of a state or political
19 subdivision ~~thereof~~ operating pursuant to a plan provided for in subsection (1)(a).

20 (c) "Unemployment benefits" means any benefits payable under the Montana unemployment
21 insurance law, including amounts payable by the department pursuant to an agreement under any federal
22 law providing for benefits, assistance, or allowances with respect to unemployment.

23 (2) An individual filing a new claim for unemployment benefits shall, at the time of filing the claim,
24 disclose whether or not ~~he~~ the individual owes child support obligations. If an individual discloses that ~~he~~
25 the individual owes child support obligations and the individual is determined to be eligible for
26 unemployment benefits, the department shall notify the state or local child support enforcement agency
27 enforcing ~~such~~ the obligation that the individual has been determined to be eligible for unemployment
28 benefits.

29 (3) The department shall deduct and withhold from any unemployment benefits payable to an
30 individual owing child support obligations:

1 (a) the amount specified by the individual to the department to be deducted and withheld under
2 this subsection if neither subsection (3)(b) nor (3)(c) is applicable;

3 (b) the amount, if any, determined pursuant to an agreement submitted to the department under
4 section ~~454(20)(B)(i)~~ 454(19)(B)(i) of the Social Security Act (42 U.S.C. 654(19)(B)(i)) by the state or local
5 child support enforcement agency, unless subsection (3)(c) is applicable; or

6 (c) any amount otherwise required to be ~~so~~ deducted and withheld from ~~such~~ unemployment
7 benefits pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act (42
8 U.S.C. 662(e)), properly served upon the department.

9 (4) The department shall pay any amount deducted and withheld under subsection (3) to the
10 appropriate state or local child support enforcement agency.

11 (5) Deductions may be made pursuant to this section only if appropriate arrangements have been
12 made for reimbursement by the state or local child support enforcement agency for the administrative costs
13 incurred by the department under this section.

14 (6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to
15 the individual as unemployment benefits and paid by ~~such~~ the individual to the state or local child support
16 enforcement agency in satisfaction of the individual's child support obligations."

17
18 **Section 178.** Section 39-71-431, MCA, is amended to read:

19 "**39-71-431. Assigned risk plan.** (1) ~~Following the date on which the provisions of 39-71-2314~~
20 ~~through 39-71-2320 and 39-71-2337 are implemented but no later than December 31, 1990, the~~ The
21 ~~commissioner of the department of labor and industry may order the establishment of~~ establish and
22 ~~administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2,~~
23 ~~the coverage required by this chapter for employers who are unable to procure coverage through ordinary~~
24 ~~methods. In determining whether to order~~ establish ~~an assigned risk plan to be established, the~~
25 ~~commissioner shall consider the effect a plan would have on the availability of workers' compensation~~
26 ~~insurance and the need to provide competitive workers' compensation premium rates for employers in this~~
27 ~~state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at~~
28 ~~least 6 months following the commissioner's order creating the plan.~~

29 (2) All plan No. 2 insurers and the state fund shall subscribe to and participate in the assigned risk
30 plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation insurance policies in this state.

(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage."

Section 179. Section 39-71-501, MCA, is amended to read:

"39-71-501. Definition of uninsured employer. For the purposes of 39-71-501 through 39-71-511 and 39-71-515 through ~~39-71-519~~ 39-71-520, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401."

Section 180. Section 39-71-517, MCA, is amended to read:

"39-71-517. Requirement to serve papers. In pursuing remedies under 39-71-501 through 39-71-511 and 39-71-515 through ~~39-71-519~~ 39-71-520, an injured employee or ~~his~~ the employee's beneficiaries shall serve all pleadings and all other litigation papers on the department and the uninsured employer, regardless of whether the department or the uninsured employer is a party to the particular action to which the papers relate."

Section 181. Section 39-71-519, MCA, is amended to read:

"39-71-519. Settlement. The department, the uninsured employer, the injured employee or ~~his~~ the employee's beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under 39-71-501 through 39-71-511 and 39-71-515 through ~~39-71-519~~ 39-71-520 of any or all of the parties. ~~Such a~~ The settlement is subject to department approval in accordance with 39-71-741."

1 **Section 182.** Section 39-71-703, MCA, is amended to read:

2 **"39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a
3 permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits,
4 the worker is entitled to a permanent partial disability award if that worker:

5 (a) has an actual wage loss as a result of the injury; and

6 (b) has a permanent impairment rating that:

7 (i) is established by objective medical findings; and

8 (ii) is more than zero as determined by the latest edition of the American medical association Guides
9 to the Evaluation of Permanent Impairment.

10 (2) When a worker receives an impairment rating as the result of a compensable injury and has no
11 actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

12 (3) The permanent partial disability award must be arrived at by multiplying the percentage arrived
13 at through the calculation provided in subsection ~~(4)~~ (5) by 350 weeks.

14 (4) A permanent partial disability award granted an injured worker may not exceed a permanent
15 partial disability rating of 100%.

16 (5) The percentage to be used in subsection (3) must be determined by adding all of the following
17 applicable percentages to the impairment rating:

18 (a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over
19 40 years of age at the time of injury, 1%;

20 (b) for a worker who has completed less than 12 years of education, 1%; for a worker who has
21 completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

22 (c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an
23 actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual
24 wage loss of more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be
25 based on the difference between the actual wages received at the time of injury and the wages that the
26 worker earns or is qualified to earn after the worker reaches maximum healing.

27 (d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury
28 the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was
29 performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%;
30 if a worker was performing medium labor activity at the time of the injury and after the injury the worker

can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(9) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 183. Section 40-5-161, MCA, is amended to read:

"40-5-161. Duties of initiating tribunal. (1) Upon the filing of a petition authorized by this part, an initiating tribunal shall forward three copies of the petition and its accompanying documents:

(a) to the responding tribunal or appropriate support enforcement agency in the responding state;
or

(b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) The department of public health and human services is the initiating tribunal for any action or

proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and ~~5~~ 6. In all other cases, the district court is the initiating tribunal."

Section 184. Section 40-5-164, MCA, is amended to read:

"40-5-164. Duties of support enforcement agency. (1) A support enforcement agency of this state, upon application, shall provide services to a petitioner in a proceeding under this part.

(2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

(a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) after receipt of a written notice from an initiating, responding, or registering tribunal, promptly send a copy of the notice by first-class mail to the petitioner;

(e) after receipt of a written communication from the respondent or the respondent's attorney, promptly send a copy of the communication by first-class mail to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

(4) For purposes of this part, the department of public health and human services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4, and ~~5~~ 6. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

Section 185. Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a person who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a person who is presumed to be a child's

1 father under the provisions of 40-6-105.

2 (2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated,
3 self-supporting, married, or a member of the armed forces of the United States; any person under 19 years
4 of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity
5 began prior to the person's 18th birthday and for whom:

6 (i) support rights are assigned under 53-2-613;

7 (ii) a public assistance payment has been made;

8 (iii) the department is providing support enforcement services under 40-5-203; or

9 (iv) the department has received a referral for interstate services from an agency of another state
10 under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal
11 Enforcement of Support Act, or the Uniform Interstate Family Support Act or under Title IV-D of the Social
12 Security Act.

13 (b) The term may not be construed to limit the ability of the department to enforce a support order
14 according to its terms when the order provides for support to extend beyond the child's 18th birthday.

15 (3) "Department" means the department of public health and human services.

16 (4) "Director" means the director of the department of public health and human services or the
17 director's authorized representative.

18 (5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

19 (6) "Hearings officer" or "~~hearing~~ hearings examiner" means the hearings officer appointed by the
20 department for the purposes of this chapter.

21 (7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support
22 of a child or children.

23 (8) "Obligee" means:

24 (a) a person to whom a duty of support is owed and who is receiving support enforcement services
25 under this part; or

26 (b) a public agency of this or another state having the right to receive current or accrued support
27 payments.

28 (9) "Obligor" means a person, including an alleged father, who owes a duty of support.

29 (10) "Parent" means the natural or adoptive parent of a child.

30 (11) "Paternity blood test" means a test that demonstrates through examination of genetic markers

1 either that an alleged father is not the natural father of a child or that there is a probability that an alleged
2 father is the natural father of a child. Paternity blood tests may include but are not limited to the human
3 leukocyte antigen test and DNA probe technology.

4 (12) "Public assistance" means any type of monetary or other assistance for a child, including
5 medical and foster care benefits. The term includes payments to meet the needs of a relative with whom
6 the child is living, if assistance has been furnished with respect to the child by a state or county agency
7 of this state or any other state.

8 (13) "Support debt" or "support obligation" means the amount created by:

9 (a) the failure to provide for the medical, health, and support needs of a child under the laws of
10 this or any other state or under a support order; or

11 (b) a support order for spousal maintenance if the judgment or order requiring payment of
12 maintenance also contains a judgment or order requiring payment of child support for a child of whom the
13 person awarded maintenance is the custodial parent.

14 (14) "Support order" means an order, whether temporary or final, that:

15 (a) provides for the payment of a specific amount of money, expressed in periodic increments or
16 as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical
17 and health needs, child care, education, recreation, clothing, transportation, and other related expenses and
18 costs specific to the needs of the child; and

19 (b) is issued by:

20 (i) a district court of this state;

21 (ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

22 (iii) an administrative agency pursuant to proceedings under this part; or

23 (iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing
24 function and process similar to those of the department under this part.

25 (15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations
26 promulgated under the act."

27
28 **Section 186.** Section 40-5-701, MCA, is amended to read:

29 **"40-5-701. Definitions.** As used in this part, the following definitions apply:

30 (1) (a) "Child" means:

1 (i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member
2 of the armed forces of the United States;

3 (ii) a person under 19 years of age who is still in high school;

4 (iii) a person who is mentally or physically incapacitated when the incapacity began prior to that
5 person reaching 18 years of age; and

6 (iv) in IV-D cases, a person for whom:

7 (A) support rights are assigned under 53-2-613;

8 (B) a public assistance payment has been made;

9 (C) the department is providing support enforcement services under 40-5-203; or

10 (D) the department has received a referral for interstate services from an agency of another state
11 under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal
12 Enforcement of Support Act, or the Uniform Interstate Family Support Act or under Title IV-D of the Social
13 Security Act.

14 (b) The term may not be construed to limit the ability of the department to enforce a support order
15 according to its terms when the order provides for support extending beyond the time the child reaches 18
16 years of age.

17 (2) "Delinquency" means a support debt or support obligation due under a support order in an
18 amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent
19 to suspend a license.

20 (3) "Department" means the department of public health and human services.

21 (4) "IV-D case" means a case in which the department is providing support enforcement services
22 as a result of:

23 (a) an assignment of support rights under 53-2-613;

24 (b) a payment of public assistance;

25 (c) an application for support enforcement services under 40-5-203; or

26 (d) a referral for interstate services from an agency of another state under the provisions of the
27 Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support
28 Act, or the Uniform Interstate Family Support Act or under Title IV-D of the Social Security Act.

29 (5) "License" means a license, certificate, registration, or authorization issued by an agency of the
30 state of Montana granting a person a right or privilege to engage in a business, occupation, or profession

1 or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing
2 authority prior to its date of expiration.

3 (6) "Licensing authority" means any department, division, board, agency, or instrumentality of this
4 state that issues a license.

5 (7) "Obligee" means:

6 (a) a person to whom a support debt or support obligation is owed; or

7 (b) a public agency of this or another state that has the right to receive current or accrued support
8 payments or that is providing support enforcement services under this chapter.

9 (8) "Obligor" means a person who owes a duty of support.

10 (9) "Order suspending a license" means an order issued by a support enforcement entity to
11 suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the
12 social security number of the obligor.

13 (10) "Payment plan" includes but is not limited to a plan approved by the support enforcement
14 entity that provides sufficient security to ensure compliance with a support order and that incorporates
15 voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic
16 payment of a support debt and, if applicable, current and future support.

17 (11) "Support debt" or "support obligation" means the amount created by:

18 (a) the failure to provide support to a child under the laws of this or any other state or a support
19 order; or

20 (b) a support order for spousal maintenance if the judgment or order requiring payment of
21 maintenance also contains a judgment or order requiring payment of child support for a child for whom the
22 person awarded maintenance is the custodial parent.

23 (12) "Support enforcement entity" means:

24 (a) in IV-D cases, the department; or

25 (b) in all other cases, the district court that entered the support order or a district court in which
26 the support order is registered.

27 (13) "Support order" means an order that provides a determinable amount for temporary or final
28 periodic payment of a support debt or support obligation and that may include payment of a determinable
29 or indeterminable amount for insurance covering the child issued by:

30 (a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(c) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(d) an administrative agency of another state with a hearing function and process similar to those of the department."

Section 187. Section 40-5-821, MCA, is amended to read:

"40-5-821. Penalty imposed by tribunal. (1) In addition to any other penalty provided by this part or other law, a tribunal, after a hearing, may impose a civil penalty not to exceed \$25 for each day that a parent, health benefit plan, employer, union, or other payor is found to have knowingly violated a medical support order or a provision of or a rule adopted under this part.

(2) ~~The civil penalty must be deposited as provided in 40-5-813.~~

(3) Imposition of a civil penalty under this section may be appealed if the tribunal is a court or may be reviewed under Title 2, chapter 4, part 7, if the tribunal is the department."

Section 188. Section 41-1-402, MCA, is amended to read:

"41-1-402. Validity of consent of minor for health services. (1) The consent to the provision of medical or surgical care or services by a hospital or public clinic or to the performance of medical or surgical care or services by a physician licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who is or was ever married or has had a child or graduated from high school or is emancipated;

(b) a minor who has been separated from ~~his~~ the minor's parent, parents, or legal guardian for whatever reason and is ~~supporting himself~~ providing self-support by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-consent ~~only~~ applies only to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, a sexually transmitted disease, ~~and~~ or drug and substance abuse also obliges the health professional, if ~~he~~ the health professional accepts the responsibility for treatment, to counsel the minor ~~by himself or by referral~~ to refer the minor to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which ~~his~~ the minor's health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian ~~shall~~ must be informed as soon as practical except under the circumstances mentioned in this subsection (1).

(2) A minor who has had a child may give effective consent to health service for ~~his~~ the child.

(3) A minor may give consent for health care for ~~his~~ the minor's spouse if ~~his~~ the spouse is unable to give consent by reason of physical or mental incapacity."

Section 189. Section 41-3-204, MCA, is amended to read:

"41-3-204. Admissibility and preservation of evidence. (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) ~~Any~~ A person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section must be paid by the department.

(3) When ~~any~~ a person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, the person shall include in the report either a written description or photographs of the evidence.

(4) A physician, either in the course of providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section must be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section must be sent to the local affiliate of the department at the time that the written confirmation report is sent or as soon after the report is sent as is possible. If a confirmation report is not made, the evidence and the initial report must be destroyed as provided in 41-3-202(3)(b)(5)(b)."

Section 190. Section 41-4-102, MCA, is amended to read:

"41-4-102. Financial responsibility. Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children ~~shall~~ must be determined in accordance with the provisions of Article V ~~thereof~~ of that compact in the first instance. However, in the event of partial or complete default of performance ~~thereunder~~ under the compact, the provisions of Title 40, chapter 5, part 1 (Revised Uniform Reciprocal Enforcement of Support Act) (Uniform Interstate Family Support Act), 41-3-406, and 41-3-1122 also may be invoked."

Section 191. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

- (1) "Adult" means an individual who is 18 years of age or older.
- (2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.
- (3) "Commit" means to transfer to legal custody.
- (4) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.
- (5) "Court", when used without further qualification, means the youth court of the district court.
- (6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.
- (7) "Delinquent youth" means a youth:
 - (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or
 - (b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of probation.
- (8) "Department" means the department of corrections provided for in 2-15-2301.
- (9) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case.

1 (10) "Detention facility" means a physically restricting facility designed to prevent a youth from
2 departing at will. The term includes a youth detention facility, short-term detention center, and regional
3 detention facility.

4 (11) "Final disposition" means the implementation of a court order for the disposition or placement
5 of a youth as provided in 41-5-523.

6 (12) "Foster home" means a private residence licensed by the department for placement of a youth.

7 (13) "Guardianship" means the status created and defined by law between a youth and an adult
8 with the reciprocal rights, duties, and responsibilities.

9 (14) (a) "Holdover" means a room, office, building, or other place approved by the board of crime
10 control for the temporary detention and supervision of youth in a physically unrestricting setting for a period
11 not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an
12 appropriate detention or shelter care facility.

13 (b) The term does not include a jail.

14 (15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal
15 offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults
16 after arrest.

17 (16) "Judge", when used without further qualification, means the judge of the youth court.

18 (17) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction
19 that gives a person the right and duty to:

20 (i) have physical custody of the youth;

21 (ii) determine with whom the youth shall live and for what period;

22 (iii) protect, train, and discipline the youth; and

23 (iv) provide the youth with food, shelter, education, and ordinary medical care.

24 (b) An individual granted legal custody of a youth shall personally exercise the individual's rights
25 and duties as guardian unless otherwise authorized by the court entering the order.

26 (18) "Necessary parties" includes the youth, the youth's parents, guardian, custodian, or spouse.

27 (19) "Parent" means the natural or adoptive parent but does not include a person whose parental
28 rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless
29 the putative father's paternity is established by an adjudication or by other clear and convincing proof.

30 (20) "Probable cause hearing" means the hearing provided for in 41-5-303.

1 (21) "Regional detention facility" means a youth detention facility established and maintained by
2 two or more counties, as authorized in 41-5-811.

3 (22) "Restitution" means payments in cash to the victim or with services to the victim or the general
4 community when these payments are made pursuant to an informal adjustment, consent decree, or other
5 youth court order.

6 (23) "Secure detention facility" means ~~any~~ a public or private facility that:

7 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal
8 offenses; and

9 (b) is designed to physically restrict the movements and activities of youth or other individuals held
10 in lawful custody of the facility.

11 (24) "Serious juvenile offender" means a youth who has committed an offense that would be
12 considered a felony offense if committed by an adult and that is an offense against a person, an offense
13 against property, or an offense involving dangerous drugs.

14 (25) "Shelter care" means the temporary substitute care of youth in physically unrestricting
15 facilities.

16 (26) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited
17 to the facilities enumerated in 41-5-306(1).

18 (27) "Short-term detention center" means a detention facility licensed by the department for the
19 temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause
20 hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

21 (28) "State youth correctional facility" means a residential facility used for the placement and
22 rehabilitation of delinquent youth, such as the Pine Hills school in Miles City ~~and the Mountain View school~~
23 ~~in Helena.~~

24 (29) "Substitute care" means full-time care of youth in a residential setting for the purpose of
25 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who
26 are removed from or are without the care and supervision of their parents or guardian.

27 (30) "Youth" means an individual who is less than 18 years of age without regard to sex or
28 emancipation.

29 (31) "Youth court" means the court established pursuant to this chapter to hear all proceedings in
30 which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care

1 and includes the youth court judge and probation officers.

2 (32) "Youth detention facility" means a secure detention facility licensed by the department for the
3 temporary substitute care of youth that:

4 (a) is operated, administered, and staffed separately and independently of a jail; and

5 (b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

6 (33) "Youth in need of care" has the meaning provided for in 41-3-102.

7 (34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that,
8 if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

9 (a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

10 (b) continues to exhibit behavior beyond the control of the youth's parents, foster parents, physical
11 custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or
12 guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

13 (c) has committed any of the acts of a delinquent youth but whom the youth court, in its
14 discretion, chooses to regard as a youth in need of supervision."

15
16 **Section 192.** Section 41-5-1008, MCA, is amended to read:

17 **"41-5-1008. Rulemaking authority.** The board may adopt rules necessary to implement the
18 provisions of 41-5-103(13)(14), 41-5-812, and 41-5-1001 through 41-5-1008."

19
20 **Section 193.** Section 45-2-311, MCA, is amended to read:

21 **"45-2-311. Criminal responsibility of corporations.** (1) A corporation may be prosecuted for the
22 commission of an offense only if, ~~but only if~~:

23 (a) the offense is a misdemeanor, ~~and~~ is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318,
24 45-6-326, 45-6-327, 45-8-113, 45-8-114, 45-8-212, 45-8-214, 82-1-201, or 82-10-104, or is defined by
25 another statute ~~which~~ that clearly indicates a legislative purpose to impose liability on a corporation and
26 an agent of the corporation performs the conduct ~~which~~ that is an element of the offense while acting
27 within the scope of ~~his~~ the agent's office or employment and in behalf of the corporation, except that any
28 limitation in the defining statute concerning the corporation's accountability for certain agents or under
29 certain circumstances is applicable; or

30 (b) the commission of the offense is authorized, requested, commanded, or performed by the board

of directors or by a high managerial agent who is acting within the scope of ~~his~~ that agent's employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct ~~which~~ that is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity."

Section 194. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful attempt to purchase or possession of an intoxicating substance -- interference with sentence or court order. (1) A person under the age of 21 years commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. The person need not be consuming or in possession of the intoxicating substance at the time of arrest to violate this subsection. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) In addition to any disposition by the youth court under 41-5-523, a person under 18 years of age who is convicted of the offense of possession of an intoxicating substance shall:

(a) for the first offense, be fined an amount not to exceed \$100 and:

(i) have the person's driver's license confiscated by the court for not less than 30 days and not more than 90 days and be ordered not to drive during that period if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) be ordered to perform community service if a community service program is available; and

(iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(b) for a second offense, be fined an amount not to exceed \$200 and:

(i) have the person's driver's license suspended for not less than 60 days and not more than 120 days;

(ii) be ordered to perform community service if a community service program is available; and

(iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(c) for a third or subsequent offense, be fined an amount not less than \$300 or more than \$500 and:

(i) have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches the age of 18, whichever occurs last;

(ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by the department of ~~corrections~~ public health and human services, if determined by the court to be appropriate.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance shall:

(a) for a first offense, be fined an amount not to exceed \$50 and be ordered to perform community service if a community service program is available;

(b) for a second offense, be fined an amount not to exceed \$100 and:

(i) be ordered to perform community service if a community service program is available; and

(ii) have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, be fined an amount not to exceed \$200 and:

(i) be ordered to perform community service if a community service program is available;

(ii) have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of ~~corrections~~ public health and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under ~~the age of 21~~ years of age commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$50 if the person was 18 years of age or older at the time the offense was committed or \$100 if the person was under 18 years of age at the time that the offense was committed.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses committed but may not be considered part of the person's driving record for insurance purposes unless a second or subsequent conviction or adjudication under this section occurs. (See compiler's comments for contingent termination of certain text.)"

Section 195. Section 45-8-317, MCA, is amended to read:

"45-8-317. Exceptions. (1) Section 45-8-316 and, ~~except for a person referred to in subsection~~

~~(7), 45-8-328~~ does not apply to:

- ~~(1)(a)~~ any peace officer of the state of Montana;
 - ~~(2)(b)~~ any officer of the United States government authorized to carry a concealed weapon;
 - ~~(3)(c)~~ a person in actual service as a national guardsman;
 - ~~(4)(d)~~ a person summoned to the aid of any of the persons named in subsections (1)(a) through ~~(3)~~ (1)(c);
 - ~~(5)(e)~~ a civil officer or ~~his~~ the officer's deputy engaged in the discharge of official business;
 - ~~(6)(f)~~ a probation and parole officer authorized to carry a firearm under 46-23-1002;
 - ~~(7)(g)~~ a person issued a permit under 45-8-321;
 - ~~(8)(h)~~ an agent of the department of justice or a criminal investigator in a county attorney's office;
 - ~~(9)(i)~~ a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; or
 - ~~(10)(j)~~ the carrying of arms on one's own premises or at one's home or place of business.
- (2) Except with regard to a person issued a permit under 45-8-321, the provisions of 45-8-328 do not apply to this section."

Section 196. Section 45-9-208, MCA, is amended to read:

"45-9-208. Mandatory dangerous drug information course. A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of ~~corrections~~ public health and human services under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a certified chemical dependency counselor working with the person recommends treatment."

Section 197. Section 45-10-108, MCA, is amended to read:

"45-10-108. Mandatory dangerous drug information course. A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in

45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of ~~corrections~~ public health and human services under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a certified chemical dependency counselor working with the person recommends treatment."

Section 198. Section 46-6-211, MCA, is amended to read:

"46-6-211. Issuance of arrest warrant or summons. (1) Upon the filing of a charge, the court may issue a summons or an arrest warrant as provided in ~~46-11-110 and~~ 46-11-201. A summons may be issued to a corporation upon the filing of a charge against it. More than one warrant or summons may be issued on the same charge.

(2) A summons may be served personally or by first-class mail."

Section 199. Section 46-14-101, MCA, is amended to read:

"46-14-101. Mental disease or defect. As used in ~~46-14-204, 46-14-312, 46-14-313, and this~~ chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial behavior."

Section 200. Section 46-18-130, MCA, is amended to read:

"46-18-130. (Temporary) Commission on sentencing. (1) There is a commission on sentencing. The commission is allocated to the department of corrections for administrative purposes only, as provided in 2-15-121.

(2) The commission consists of:

(a) two members of the house of representatives, selected by the speaker of the house of representatives, no more than one of whom may be from the same political party;

(b) two members of the senate, selected by the president of the senate, no more than one of whom may be from the same political party;

(c) two district court judges selected by the chief justice of the Montana supreme court;

(d) the director of the department of corrections or the director's designee; and

(e) the following persons appointed by the governor:

1 (i) a county attorney;
2 (ii) a criminal defense attorney;
3 (iii) a probation and parole officer;
4 (iv) a county sheriff;
5 (v) a chief of police;
6 (vi) a member of the board of pardons and parole;
7 (vii) an employee of the department of justice; and
8 (viii) two members of the public, one of whom must be a victim of a crime for which a sentence
9 of death or of imprisonment for more than 1 year was imposed.

10 (3) Appointments under subsection (2) must be made within 60 days after March 31, 1995.

11 (4) The commission shall select a presiding officer from its members.

12 (5) The commission shall meet at least quarterly. (Terminates May 31, 1997--sec. 5, Ch. 306, L.
13 1995.)"

14
15 **Section 201.** Section 46-18-801, MCA, is amended to read:

16 **"46-18-801. Effect of conviction -- civil disabilities.** (1) Conviction of an offense does not deprive
17 the offender of a civil or constitutional right, except as provided in the Montana constitution or as
18 specifically enumerated by the sentencing judge as a necessary condition of the sentence directed toward
19 the objectives of rehabilitation and the protection of society. If the sentencing judge incorporates by
20 reference in the sentencing order rules of the department of corrections or the board of pardons and parole
21 setting conditions of probation, parole, or supervised release with which the offender is required to comply,
22 the incorporation by reference constitutes a specific enumeration of the conditions for purposes of this
23 section.

24 (2) Except as provided in the Montana constitution, if a person has been deprived of a civil or
25 constitutional right by reason of conviction for an offense and the person's sentence has expired or the
26 person has been pardoned, the person is restored to all civil rights and full citizenship, the same as if the
27 conviction had not occurred."

28
29 **Section 202.** Section 46-20-701, MCA, is amended to read:

30 **"46-20-701. Elements of record court considers on review -- errors noticed.** (1) Whenever the

record on appeal ~~shall contain~~ contains any order, ruling, or proceeding of the trial court against the ~~respondent (convicted person)~~ convicted person affecting ~~his~~ the convicted person's substantial rights on the appeal of ~~said the~~ the cause, together with any required objection of ~~such respondent~~ the convicted person, the supreme court on ~~such that~~ that appeal shall consider ~~such the~~ the orders, rulings, or proceedings and the objections thereto and shall reverse or affirm the cause on ~~said the~~ the appeal according to the substantial rights of the respective parties, as shown upon the record. ~~No A cause shall may not~~ may not be reversed by reason of any error committed by the trial court against the ~~appellant (convicted person)~~ convicted person unless the record shows that the error was prejudicial.

(2) Any error, defect, irregularity, or variance ~~which that~~ that does not affect substantial rights ~~shall~~ must be disregarded. ~~No A~~ A claim alleging an error affecting jurisdictional or constitutional rights may not be noticed on appeal, if the alleged error was not objected to as provided in 46-20-104, unless the ~~defendant (convicted person)~~ convicted person establishes that the error was prejudicial as to ~~his~~ the convicted person's guilt or punishment and that:

(a) the right asserted in the claim did not exist at the time of the trial and has been determined to be retroactive in its application;

(b) the prosecutor, the judge, or a law enforcement agency suppressed evidence from the ~~defendant (convicted person)~~ convicted person or ~~his~~ the convicted person's attorney that prevented the claim from being raised and disposed of; or

(c) material and controlling facts upon which the claim is predicated were not known to the ~~defendant (convicted person)~~ convicted person or ~~his~~ the convicted person's attorney and could not have been ascertained by the exercise of reasonable diligence."

Section 203. Section 46-24-212, MCA, is amended to read:

"46-24-212. Information concerning confinement. Upon request of a victim of a felony offense, the department of corrections or the board of pardons and parole, as applicable, shall:

(1) promptly inform the victim of the estimated date of the prisoner's release from confinement in the Montana state prison, if reasonably ascertainable;

(2) promptly inform the victim of the time and place of a parole hearing concerning the prisoner and of the victim's right to submit a statement to the board of pardons and parole under 46-23-202;

(3) provide reasonable advance notice to the victim before release of the defendant on furlough

or to a work-release program, half-way house, or other community-based program or correctional facility;
and

(4) promptly inform the victim of the occurrence of any of the following events concerning the prisoner:

- (a) an escape from a correctional or mental health facility or community program;
- (b) a recapture;
- (c) a decision of the board of pardons and parole;
- (d) a decision of the governor to commute the sentence or to grant executive clemency;
- (e) a release from confinement and any conditions attached to the release; and
- (f) the prisoner's death."

Section 204. Section 46-30-401, MCA, is amended to read:

"46-30-401. Application for issuance of requisition. (1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the governor ~~his~~ a written application for a requisition for the return of the person charged. The application ~~shall~~ must state the name of the person charged, the crime charged against ~~him~~ the person, the approximate time, place, and circumstances of its commission, and the state in which ~~he~~ the person is believed to be, including the location of the accused ~~therein in that state~~ at the time the application is made. ~~It shall~~ The application must certify that in the opinion of the prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not being instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of ~~his~~ bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the ~~parole~~ board of pardons and parole, or the warden of the institution or sheriff of the county from which the escape was made shall present to the governor a written application for a requisition for the return of the person. The application ~~shall~~ must state the name of the person, the crime of which ~~he~~ the person was convicted, the circumstances of ~~his~~ the person's escape from confinement or of the breach of the terms of ~~his~~ bail, probation, or parole, and the state in which ~~he~~ the person is believed to be, including the location of the person ~~therein in that state~~ at the time the application is made.

(3) The application ~~shall~~ must be verified by affidavit, executed in duplicate, and accompanied by

two certified copies of the:

(a) indictment returned;

(b) information and affidavit filed;

(c) complaint made to the judge or magistrate stating the offense with which the accused is charged;

(d) judgment of conviction; or

(e) sentence.

(4) The prosecuting officer, ~~parole board of pardons and parole~~, warden, or sheriff may also attach ~~such~~ further affidavits and other documents in duplicate ~~as he considers~~ that are considered proper to be submitted with the application.

(5) One copy of the application, with the action of the governor indicated by endorsement ~~thereon~~ on the application, and one of the certified copies of the indictment, complaint, information and affidavits, judgment of conviction, or sentence ~~shall~~ must be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers ~~shall~~ must be forwarded with the governor's requisition."

Section 205. Section 50-4-504, MCA, is amended to read:

"50-4-504. Definitions. As used in this part, the following definitions apply:

(1) "Data base" means the health care data base created pursuant to 50-4-502.

(2) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) "Health care" includes both physical health care and mental health care.

(4) "Health care advisory council" means the council provided for in 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403.

(5) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101(49). The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(6) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise

1 authorized by the laws of this state to provide health care in the ordinary course of business or practice of
2 a profession.

3 (7) "Health insurer" means any health insurance company, health service corporation, health
4 maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent
5 permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care
6 benefit plan offered by public and private entities."

7
8 **Section 206.** Section 50-4-605, MCA, is amended to read:

9 **"50-4-605. Definitions.** For the purposes of this part, the following definitions apply:

10 (1) "Certificate of public advantage" or "certificate" means a written certificate issued by the
11 department as evidence of the department's intention that the implementation of a cooperative agreement,
12 when actively supervised by the department, receive state action immunity from prosecution as a violation
13 of state or federal antitrust laws.

14 (2) "Cooperative agreement" or "agreement" means a written agreement between two or more
15 health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs;
16 emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or
17 procedures; or other services customarily offered by health care facilities.

18 (3) "Department" means the department of justice provided for in Title 2, chapter 15, part 20.

19 (4) "Health care facility" means all facilities and institutions, whether public or private, proprietary
20 or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated
21 persons. The term includes all facilities and institutions included in the definition of health care facility
22 contained in 50-5-101(19). The term does not apply to a facility operated by religious groups relying solely
23 on spiritual means, through prayer, for healing."
24

25 **Section 207.** Section 50-5-101, MCA, is amended to read:

26 **"50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly
27 indicates otherwise, the following definitions apply:

28 (1) "Accreditation" means a designation of approval.

29 (2) "Adult day-care center" means a facility, freestanding or connected to another health care
30 facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of

1 daily living but that does not provide overnight care.

2 (3) (a) "Adult foster care home" means a private home that offers light personal care or custodial
3 care to four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner
4 of the home.

5 (b) As used in this subsection (3), the following definitions apply:

6 (i) "Aged person" means a person as defined by department rule as aged.

7 (ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled
8 adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person
9 is available to meet those basic needs.

10 (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by
11 department rule as disabled.

12 (iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such
13 personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine
14 administration. The term does not include the administration of prescriptive medications.

15 (4) "Affected person" means an applicant for a certificate of need, a health care facility located
16 in the geographic area affected by the application, an agency that establishes rates for health care facilities,
17 or a third-party payer who reimburses health care facilities in the area affected by the proposal.

18 (5) "Ambulatory surgical facility" means a facility that provides surgical treatment to patients not
19 requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery
20 or other treatment.

21 (6) "Capital expenditure" means:

22 (a) an expenditure made by or on behalf of a health care facility that, under generally accepted
23 accounting principles, is not properly chargeable as an expense of operation and maintenance; or

24 (b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or
25 any other property of value had changed hands.

26 (7) "Certificate of need" means a written authorization by the department for a person to proceed
27 with a proposal subject to 50-5-301.

28 (8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation,
29 and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health
30 problems and endangers the health, interpersonal relationships, or economic function of an individual or the

1 public health, welfare, or safety.

2 (9) "Clinical laboratory" means a facility for the microbiological, serological, chemical,
3 hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of
4 materials derived from the human body for the purpose of providing information for the diagnosis,
5 prevention, or treatment of a disease or assessment of a medical condition.

6 (10) "College of American pathologists" means the organization nationally recognized by that name,
7 with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and
8 accredits clinical laboratories that it finds meet its standards and requirements.

9 (11) "Comparative review" means a joint review of two or more certificate of need applications that
10 are determined by the department to be competitive in that the granting of a certificate of need to one of
11 the applicants would substantially prejudice the department's review of the other applications.

12 (12) "Construction" means the physical erection of a health care facility and any stage of the
13 physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health
14 care facility.

15 (13) "Department" means the department of public health and human services provided for in
16 2-15-2201.

17 (14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney
18 diseases and includes freestanding hemodialysis units.

19 (15) "Federal acts" means federal statutes for the construction of health care facilities.

20 (16) "Governmental unit" means the state, a state agency, a county, municipality, or political
21 subdivision of the state, or an agency of a political subdivision.

22 (17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency,
23 private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or
24 designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any
25 individual. The term does not include offices of private physicians or dentists. The term includes ambulatory
26 surgical facilities, chemical dependency facilities, end-stage renal dialysis facilities, health maintenance
27 organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries,
28 long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public
29 health centers, rehabilitation facilities, residential care facilities, and residential treatment facilities.

30 (18) "Health maintenance organization" means a public or private organization that provides or

1 arranges for health care services to enrollees on a prepaid or other financial basis, either directly through
2 provider employees or through contractual or other arrangements with a provider or group of providers.

3 (19) "Home health agency" means a public agency or private organization or subdivision of the
4 agency or organization that is engaged in providing home health services to individuals in the places where
5 they live. Home health services must include the services of a licensed registered nurse and at least one
6 other therapeutic service and may include additional support services.

7 (20) "Home infusion therapy agency" means a health care facility that provides home infusion
8 therapy services.

9 (21) "Home infusion therapy services" means the preparation, administration, or furnishing of
10 parenteral medications or parenteral or enteral nutritional services to an individual in that individual's
11 residence. The services include an educational component for the patient, the patient's caregiver, or the
12 patient's family member.

13 (22) "Hospice" means a coordinated program of home and inpatient health care that provides or
14 coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's
15 family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the
16 final stages of illness and dying and that includes formal bereavement programs as an essential component.
17 The term includes:

18 (a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice
19 that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

20 (b) a residential hospice facility, which is a facility managed directly by a licensed hospice program
21 that can house three or more hospice patients.

22 (23) "Hospital" means a facility providing, by or under the supervision of licensed physicians,
23 services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals.
24 Services provided may or may not include obstetrical care, emergency care, or any other service allowed
25 by state licensing authority. A hospital has an organized medical staff that is on call and available within
26 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered
27 nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally
28 retarded, and tubercular patients.

29 (24) "Infirmary" means a facility located in a university, college, government institution, or industry
30 for the treatment of the sick or injured, with the following subdefinitions:

1 (a) an "infirmiry--A" provides outpatient and inpatient care;

2 (b) an "infirmiry--B" provides outpatient care only.

3 (25) "Intermediate developmental disability care" means the provision of nursing care services,
4 health-related services, and social services for persons with developmental disabilities, as defined in
5 53-20-102, or for individuals with related problems.

6 (26) "Intermediate nursing care" means the provision of nursing care services, health-related
7 services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour
8 nursing care.

9 ~~(25)~~(27) "Joint commission on accreditation of hospitals" means the organization nationally
10 recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their
11 requests and grants accreditation status to a health care facility that it finds meets its standards and
12 requirements.

13 ~~(26)~~(28) (a) "Long-term care facility" means a facility or part of a facility that provides skilled
14 nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to
15 a total of two or more individuals or that provides personal care.

16 (b) The term does not include community homes for persons with developmental disabilities
17 licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203;
18 youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar
19 accommodations providing for transients, students, or individuals who do not require institutional health
20 care; or juvenile and adult correctional facilities operating under the authority of the department of
21 corrections.

22 ~~(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and~~
23 ~~social services under the supervision of a licensed registered nurse on a 24 hour basis.~~

24 ~~(c) "Intermediate nursing care" means the provision of nursing care services, health-related~~
25 ~~services, and social services under the supervision of a licensed nurse to patients not requiring 24 hour~~
26 ~~nursing care.~~

27 ~~(d) "Intermediate developmental disability care" means the provision of nursing care services,~~
28 ~~health-related services, and social services for persons with developmental disabilities, as defined in~~
29 ~~53-20-102(4), or for individuals with related problems.~~

30 ~~(e) "Personal care" means the provision of services and care for residents who need some~~

~~assistance in performing the activities of daily living.~~

~~(27)~~(29) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions that is used to provide medical or other health services and that costs a substantial sum of money.

~~(28)~~(30) "Medical assistance facility" means a facility that:

- (a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and
- (b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

~~(29)~~(31) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(30)~~(32) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(31)~~(33) "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

~~(32)~~(34) "Offer" means the representation by a health care facility that it can provide specific health services.

~~(33)~~(35) "Outpatient facility" means a facility, located in or apart from a hospital, that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

~~(34)~~(36) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(35)~~(37) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(38) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(36)~~(39) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(37)~~(40) "Public health center" means a publicly owned facility providing health services, including

laboratories, clinics, and administrative offices.

~~(38)~~(41) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(39)~~(42) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(40)~~(43) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

~~(41)~~(44) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(42)~~(45) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(43)~~(46) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(47) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(44)~~(48) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 208. Section 50-5-228, MCA, is amended to read:

"50-5-228. Limited licensing. The department may grant a license that is provisional upon the correction of noncompliance with provisions of 50-5-225 through ~~50-5-230~~ 50-5-228 or rules adopted pursuant to 50-5-225 through ~~50-5-230~~ 50-5-228. A provisional license may be granted only for a specific period of time and may not be renewed."

1 **Section 209.** Section 50-5-1104, MCA, is amended to read:

2 **"50-5-1104. Rights of long-term care facility residents.** (1) The state adopts by reference for all
3 long-term care facilities the rights for long-term care facility residents applied by the federal government
4 to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or
5 medicare program (42 U.S.C. ~~1395x(i) and 1396d(e)~~ 1395i-3(a) and 1396r(a), as implemented by
6 regulation).

7 (2) In addition to the rights adopted under subsection (1), the state adopts for all residents of
8 long-term care facilities the following rights:

9 (a) A resident or ~~his~~ the resident's authorized representative must be informed by the facility at
10 least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond
11 the facility's control.

12 (b) Regardless of the source of payment, each resident or ~~his~~ the resident's authorized
13 representative is entitled, upon request, to receive and examine an explanation of ~~his~~ the resident's monthly
14 bill.

15 (c) Residents have the right to organize, maintain, and participate in resident advisory councils. The
16 facility shall afford reasonable privacy and facility space for the meetings of the councils.

17 (d) A resident has the right to present a grievance on ~~his~~ the resident's own behalf or that of others
18 to the facility or the resident advisory council. The facility shall establish written procedures for receiving,
19 handling, and informing residents or the resident advisory council of the outcome of any grievance
20 presented.

21 (e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving
22 grievances, free from restraint, interference, or reprisal.

23 (f) During ~~his~~ a resident's stay in a long-term care facility, ~~a~~ the resident retains the prerogative to
24 exercise decisionmaking rights in all aspects of ~~his~~ the resident's health care, including placement and
25 treatment issues such as medication, special diets, or other medical regimens.

26 (g) The resident's authorized representative must be notified in a prompt manner of any significant
27 accident, unexplained absence, or significant change in the resident's health status.

28 (h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial
29 exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected
30 incidents of abuse under the Montana Elder and Persons With Developmental Disabilities Abuse Prevention

1 Act, Title 52, chapter 3, part 8.

2 (i) Each resident has the right to privacy in ~~his~~ the resident's room or portion of the room. If a
3 resident is seeking privacy in ~~his~~ the resident's room, staff members should make reasonable efforts to
4 make their presence known when entering the room.

5 (j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice
6 to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written
7 notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons
8 documented in the resident's medical record by the attending physician.

9 (k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

10 (l) A resident has the right to reasonable safeguards for ~~his~~ personal possessions brought to the
11 facility. The facility shall provide a means for safeguarding the resident's small items of value in ~~his~~ the
12 resident's room or in another part of the facility where ~~he~~ the resident must have reasonable access to the
13 items.

14 (m) The resident has the right to have all losses or thefts of personal possessions promptly
15 investigated by the facility. The results of the investigation must be reported to the affected resident.

16 (3) The administrator of the facility shall adopt whatever additional measures are necessary to
17 implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating
18 to residents' health and safety that are conditions of participation in a state or federal program of medical
19 assistance."

20
21 **Section 210.** Section 50-31-103, MCA, is amended to read:

22 **"50-31-103. Definitions.** Unless the context requires otherwise, in this chapter, the following
23 definitions apply:

24 (1) "Advertisement" means representations disseminated in any manner or by any means, other
25 than by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase
26 of food, drugs, devices, or cosmetics.

27 (2) "Approved source" means water from a spring, artesian well, drilled well, municipal water
28 supply, or other source that has been found by the department to be of a safe and sanitary quality.

29 (3) "Artesian water" means water that is forced from below the ground toward the surface through
30 a well by natural underground pressure.

1 (4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or
2 extenders as those terms are understood by general custom and usage in the food industry.

3 (5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified,
4 sparkling, or other water that is from an approved source and that is disinfected and placed in a sealed
5 container or package for human consumption.

6 (6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

7 (7) "Color" includes black, white, and intermediate grays.

8 (8) (a) "Color additive" means a material that:

9 (i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that
10 is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from
11 a vegetable, animal, mineral, or other source; or

12 (ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or
13 through reaction with another substance) of imparting color ~~thereto~~ to the human body.

14 (b) The term does not include material that has been or is exempted under the federal act.

15 (9) "Consumer commodity", except as otherwise specifically provided by this subsection, means
16 any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and
17 regulations pursuant ~~thereto~~ to the federal act. The term does not include:

18 (a) any tobacco or tobacco product;

19 (b) a commodity subject to packaging or labeling requirements imposed under the Federal
20 Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) or the provisions of the eighth paragraph
21 under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C.
22 151 through 157), commonly known as the Virus-Serum-Toxin Act;

23 (c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal
24 act (21 U.S.C. 353(b)(1) and 356);

25 (d) a beverage subject to or complying with packaging or labeling requirements imposed under the
26 Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

27 (e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

28 (10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected
29 from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious
30 contaminations.

1 (11) "Cosmetic" means:

2 (a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise
3 applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

4 (b) articles intended for use as a component of these articles, except that the term does not include
5 soap.

6 (12) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization,
7 bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a
8 drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured,
9 processed, packed, or distributed the drug and that falsely purports or is represented to be the product of
10 or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

11 (13) "Demineralized water" means water that has been demineralized by distillation, deionization,
12 reverse osmosis, or other methods and that contains not more than 10 parts per million total solids.

13 (14) "Department" means the department of public health and human services provided for in
14 2-15-2201.

15 (15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q),
16 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their
17 components, parts, and accessories, intended:

18 (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other
19 animals;

20 (b) to affect the structure or function of the body of humans or other animals.

21 (16) "Distilled water" means purified water that has been vaporized and condensed.

22 (17) "Drinking water" means water that has undergone purification, distillation, demineralization,
23 mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process
24 or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

25 (18) "Drug" means:

26 (a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or
27 a supplement to either of these;

28 (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease
29 in humans or other animals;

30 (c) articles (other than food) intended to affect the structure or function of the body of humans or

1 other animals;

2 (d) articles intended for use as components of any article specified in subsection (18)(a), (18)(b),
3 or (18)(c) but does not include devices or their components, parts, or accessories.

4 (19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301,
5 et seq.).

6 (20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in
7 quantities of not less than 0.7 and not more than 1.4 milligrams per liter and that complies with the food
8 and drug administration quality standards set forth in 21 CFR 103.35.

9 (21) "Food" means:

10 (a) articles used for food or drink for humans or other animals;

11 (b) chewing gum; and

12 (c) articles used for components of these articles.

13 (22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably
14 expected to result, directly or indirectly, in its becoming a component or otherwise affecting the
15 characteristics of food (including a substance intended for use in producing, manufacturing, packing,
16 processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation
17 intended for this use), if the substance is not generally recognized, among experts qualified by scientific
18 training and experience to evaluate its safety, as having been adequately shown through scientific
19 procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific
20 procedures or experience based on common use in food) to be safe under the conditions of its intended
21 use.

22 (b) The term does not include:

23 (i) a pesticide chemical in or on a raw agricultural commodity;

24 (ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage,
25 or transportation of a raw agricultural commodity;

26 (iii) a color additive;

27 (iv) a substance used in accordance with a sanction or approval granted prior to the enactment of
28 the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act
29 (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and
30 extended (21 U.S.C. ~~74~~ 603, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

(25) "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. "Immediate container" does not include package liners.

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means a list presented to the patron that states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved

1 mineral solids.

2 (30) "New drug" means a drug, the composition of which is such that:

3 (a) it is not generally recognized, among experts qualified by scientific training and experience to
4 evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions
5 prescribed, recommended, or suggested in its labeling; or

6 (b) the drug, as a result of investigations to determine its safety and effectiveness for use under
7 the conditions prescribed, has become so recognized but that has not, other than in the investigations, been
8 used to a material extent or for a material time under the conditions prescribed.

9 (31) "Official compendium" means the official United States Pharmacopoeia, official National
10 Formulary, or a supplement to either of these.

11 (32) "Organic food" means food that conforms to the definition in 50-31-222.

12 (33) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for
13 use in the delivery or display of that consumer commodity to retail purchasers.

14 (b) The term does not include:

15 (i) shipping containers or wrappings used solely for the transportation of a consumer commodity
16 in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

17 (ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail
18 customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

19 (34) "Person" includes an individual, partnership, corporation, and association.

20 (35) "Pesticide chemical" means a substance that alone, in chemical combination, or in formulation
21 with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and
22 Rodenticide Act (7 U.S.C. ~~135 through 136~~ 136, et seq.), as amended, and that is used in the production,
23 storage, or transportation of raw agricultural commodities.

24 (36) "Placard" means a nonpermanent sign used to display or describe food items for sale in a food
25 service establishment or retail establishment.

26 (37) "Principal display panel" means that part of a label that is most likely to be displayed,
27 presented, shown, or examined under normal and customary conditions of display for retail sale.

28 (38) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating,
29 extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics
30 of a food, and the enclosure of the food in a package.

(39) "Purified water" means water that is produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the ~~pharmacopoeia~~ Pharmacopoeia of the United States of America, 1980.

(40) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(41) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(42) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

(43) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

(44) "Water-bottling plant" means a facility in which bottled water is produced.

(45) "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device using external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process."

Section 211. Section 50-31-202, MCA, is amended to read:

"50-31-202. When food adulterated. A food ~~shall be deemed~~ is considered to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance ~~which that~~ that may render it injurious to health; ~~but in case.~~ If the ~~poisonous or deleterious~~ poisonous or deleterious substance is not an added substance, ~~such the~~ such the food ~~shall~~ may not be considered adulterated under this subsection if the quantity of ~~such the~~ such the substance in ~~such~~ that food does not ordinarily render it injurious to health;

(2) it bears or contains any added poisonous or added deleterious substance, other than one ~~which~~ that is:

(a) a pesticide chemical in or on a raw agricultural commodity;

(b) a food additive; or

1 (c) a color additive, ~~which~~ that is unsafe within the meaning of 50-31-109;

2 (3) it is a raw agricultural commodity and it bears or contains a pesticide chemical ~~which~~ that is
3 unsafe within the meaning of section 408(a) of the federal act (21 U.S.C. 346a(a)), as amended;

4 (4) it is or it bears or contains any food additive ~~which~~ that is unsafe within the meaning of section
5 409 of the federal act (21 U.S.C. 348) as amended; ~~provided that where.~~ However, if a pesticide chemical
6 has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance
7 prescribed under section 408 of the federal act (21 U.S.C. 346) and ~~such the~~ raw agricultural commodity
8 has been subjected to processing, such as canning, cooking, freezing, dehydrating, or milling, the residue
9 of ~~such the~~ pesticide chemical remaining in or on ~~such the~~ processed food ~~shall may~~, notwithstanding the
10 provisions of 50-31-108, 50-31-109, and subsection (4) of this section, not be ~~deemed~~ determined unsafe
11 if ~~such the~~ residue in or on the raw agricultural commodity has been removed to the extent possible in good
12 manufacturing practice and the concentration of ~~such the~~ residue in the processed food when ready to eat
13 is not greater than the tolerance prescribed for the raw agricultural commodity;

14 (5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed
15 substance or if it is otherwise unfit for food;

16 (6) it has been produced, prepared, packed, or held under unsanitary conditions ~~whereby~~ under
17 which it may have become contaminated with filth or ~~whereby~~ under which it may have been rendered
18 diseased, unwholesome, or injurious to health;

19 (7) it is the product of a diseased animal or an animal ~~which~~ that has died otherwise than by
20 slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

21 (8) its container is composed in whole or in part of any poisonous or deleterious substance ~~which~~
22 that may render the contents injurious to health;

23 (9) any valuable constituent has been in whole or in part omitted or abstracted ~~therefrom~~ from the
24 food;

25 (10) any substance has been substituted wholly or in part ~~therefor~~ for the food;

26 (11) damage or inferiority has been concealed in any manner;

27 (12) any substance has been added ~~thereto~~ to the food or mixed or packed ~~therewith~~ with the food
28 so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater
29 value than it is;

30 (13) it is confectionery and it bears or contains any alcohol or nonnutritive article or substance

except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of ~~.4%~~ 0.4%, harmless natural wax not in excess of ~~.4%~~ 0.4%, or harmless natural gum and pectin; ~~provided that. However, this paragraph shall~~ does not apply to any confectionery by reason of its containing less than ~~.5%~~ 0.5% by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances;

(14) it is or bears or contains any color additive ~~which~~ that is unsafe within the meaning of the federal act."

Section 212. Section 50-31-203, MCA, is amended to read:

"50-31-203. When food misbranded. A food ~~shall be deemed~~ is considered to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately ~~thereafter~~ after that word, the name of the food imitated;

(4) its container is ~~so~~ made, formed, or filled ~~as to be~~ in a manner that is misleading;

(5) it is in package form, unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor;

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations ~~shall~~ must be permitted and exemptions as to small packages ~~shall~~ must be established by regulations prescribed by the department;

(6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed ~~thereon~~ on the label or labeling with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in ~~such terms as to~~ that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

(a) it conforms to ~~such~~ that definition and standard; and

(b) its label bears the name of the food specified in the definition and standard and, ~~insofar~~ as may be required by ~~such~~ the regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in ~~such~~ the food;

(8) it purports to be or is represented as:

(a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below ~~such~~ that standard, unless its label bears, in ~~such~~ a manner and form ~~as such~~ that the regulations specify, a statement that it falls below ~~such~~ that standard; or

(b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in ~~such~~ a manner and form ~~as such~~ that the regulations specify, a statement that it falls below ~~such~~ that standard;

(9) it is not subject to the provisions of subsection (7) ~~of this section~~ unless it bears labeling clearly giving:

(a) the common or usual name of the food, if ~~any there be~~ there is one; and

(b) in case it is fabricated from two or more ingredients, the common or usual name of each ~~such~~ ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each; ~~provided that to~~ To the extent that compliance with the requirements of this subsection (9)(b) is impractical or results in deception or unfair competition, exemptions ~~shall~~ must be established by regulations promulgated by the department; and provided further that the The requirements of this subsection (9)(b) ~~shall~~ do not apply to food products ~~which~~ that are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department;

(10) it purports to be or is represented for special dietary uses, unless its label bears ~~such~~ information concerning its vitamin, mineral, and other dietary properties ~~as~~ that the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for ~~such~~ special dietary uses;

(11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact; ~~provided that~~ To the extent that compliance with the requirements of this subsection is impracticable, exemptions ~~shall~~ must be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as ~~defined~~ described in 81-22-101 ~~shall be~~ are

exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with ~~such~~ packaging and labeling requirements applicable to ~~such~~ that color additive prescribed under the provisions of the federal act;

(14) it is labeled "organic", "organically grown", "naturally grown", "ecologically grown", or "biologically grown" but does not conform to the definition in 50-31-222."

Section 213. Section 50-31-301, MCA, is amended to read:

"50-31-301. Definitions. As used in this part, the following definitions apply:

(1) "Antibiotic drug" means any drug intended for use by ~~man~~ humans containing any quantity of any chemical substance ~~which that~~ is produced by a microorganism and ~~which that~~ has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of ~~any~~ such a substance).

(2) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, marks or monograms unique to the manufacturer or distributor of the drug, or both.

(3) "Distributor" means a person who distributes for resale a drug in solid dosage form under ~~his~~ the person's own label whether or not ~~he~~ the person is the manufacturer of the drug.

(4) "Established name", with respect to a drug or ingredient ~~thereof~~ of the drug, means:

(a) the applicable official name designated pursuant to section 508 of the federal act (21 U.S.C. 358);

(b) if there is no ~~such~~ official name and ~~such the~~ drug or ~~such the~~ ingredient is an article recognized in an official compendium, then the official title ~~thereof of the drug or ingredient~~ in ~~such the~~ compendium ~~or provided that where.~~ If this subsection (b) (4)(b) applies to an article recognized in the United States Pharmacopoeia, the official title used in the United States Pharmacopoeia shall apply; applies.

(c) if neither subsection (4)(a) nor (4)(b) applies, then the common or usual name, if any, of ~~such~~ the drug or of ~~such the~~ ingredient.

(5) "Legend drug" means any drug defined by section 503(b) of the federal ~~Food, Drug and Cosmetic Act~~ act (21 U.S.C. 353(b)), as amended on January 15, 1980, under which its label is required

to bear the statement: "Caution: Federal law prohibits dispensing without prescription."

(6) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product.

(7) "Solid dosage form" means capsules or tablets intended for oral use."

Section 214. Section 50-31-306, MCA, is amended to read:

"50-31-306. When drug or device misbranded. (1) A drug or device ~~shall be deemed~~ is considered to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor, except that a prescription drug must contain the name and place of business of the manufacturer as well as the packer or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation ~~shall~~ may be permitted and exemptions as to small packages ~~shall~~ may be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed ~~thereon~~ on the label or labeling with ~~such~~ conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in ~~such~~ terms ~~as to~~ that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by ~~man~~ humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, sulfonmethane, or any chemical derivative of ~~such~~ the substance ~~which~~ that, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act (21 U.S.C. 352(d)), unless its label bears the name and quantity or proportion of ~~such~~ the substance or derivative ~~and~~ in juxtaposition ~~therewith~~ to the statement "Warning--May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301) of the drug, if ~~such there be~~ there is one; and

(ii) in case ~~it~~ the drug is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained ~~therein; provided that~~ in the drug. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), ~~shall apply~~ applies only to prescription drugs; ~~provided further that, and~~ to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions ~~shall~~ may be allowed under regulations promulgated by the department or under the federal act;

(f) unless its labeling bears:

(i) adequate directions for use; ~~provided that, where~~ however, if any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting ~~such the~~ the drug or device from ~~such the~~ the requirements; ~~provided further that, and~~ articles exempted under regulations issued under section 502(f) of the federal act (21 U.S.C. 352(f)) may also be exempt; and

(ii) ~~such~~ adequate warnings against use in those pathological conditions or by children ~~where~~ when its use may be dangerous to health; or adequate warnings against unsafe dosage or methods or duration of administration or application, in ~~such a~~ a manner and form ~~as~~ that are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed ~~therein, provided that the~~ in the compendium. The method of packing may be modified with the consent of the department or if consent is obtained under the federal act. In the event of inconsistency between the requirements of this subsection (1)(g) and those of subsection ~~(e)~~ (1)(e) as to the name by which the drug or its ingredients ~~shall~~ must be designated, the requirements of subsection ~~(e)~~ (1)(e) prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to

deterioration, unless it is packaged in ~~such a~~ form and manner and its label bears a statement of ~~such~~ precautions ~~as that~~ the regulations issued by the department or under the federal act require as necessary for the protection of public health. ~~No such regulation shall~~ A regulation may not be established for any drug recognized in an official compendium until the department ~~shall have~~ has informed the appropriate body charged with the revision of ~~such the~~ compendium of the need for ~~such the~~ packaging or labeling requirements and ~~such the~~ body ~~shall have~~ has failed within a reasonable time to prescribe ~~such the~~ requirements.

(i) if it is a drug and its container is ~~so~~ made, formed, or filled ~~as to be~~ in a way that is misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling ~~thereof~~;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act (21 U.S.C. 356); and

(ii) ~~such the~~ certificate or release is in effect with respect to ~~such the~~ drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act (21 U.S.C. 357); and

(ii) ~~such the~~ certificate or release is in effect with respect to ~~such the~~ drug; ~~provided that subsection.~~ This subsection (1)(n) shall does not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act; (21 U.S.C. 357(c) or (d)).

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with ~~such the~~ packaging and labeling requirements applicable to ~~such the~~ color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor ~~thereof~~ of the drug includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that

1 drug a true statement of:

2 (i) the established name, as defined in 50-31-301;

3 (ii) the formula showing quantitatively each ingredient of ~~such~~ the drug to the extent required for
4 labels under section 502(e) of the federal act (21 U.S.C. 352(e)); and

5 (iii) ~~such~~ other information in brief summary relating to side effects, contraindications, and
6 effectiveness ~~as shall be~~ that is required in regulations issued under the federal act; or

7 (q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any
8 likeness of the foregoing has been placed ~~thereon~~ on the drug or upon its container with intent to defraud.

9 (2) A drug ~~which that~~ is subject to 50-31-307 ~~shall be deemed~~ is considered to be misbranded if,
10 at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits
11 Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A
12 drug to which 50-31-307 does not apply ~~shall be deemed~~ is considered to be misbranded if, at any time
13 prior to dispensing, its label bears the caution statement quoted in the preceding sentence."
14

15 **Section 215.** Section 50-31-307, MCA, is amended to read:

16 **"50-31-307. Dispensing of prescription drugs.** (1) A drug intended for use by humans that is
17 included in one of the categories in subsection (2) may be dispensed only:

18 (a) upon a written prescription of a practitioner licensed by law to administer the drug;

19 (b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the
20 pharmacist; or

21 (c) by refilling a written or oral prescription if the refilling is authorized by the practitioner, either
22 in the original prescription or by an oral order that is reduced promptly to writing and filed by the
23 pharmacist.

24 (2) A drug must be dispensed as provided in subsection (1) if the drug:

25 (a) is a habit-forming drug to which 50-31-306(1)(d) applies;

26 (b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the
27 collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner
28 licensed by law to administer the drug; or

29 (c) is limited by an approved application under section 505 of the federal act (21 U.S.C. 355) or
30 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the

drug.

(3) If the drug is a factory prepackaged oral contraceptive, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of public health and human services pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale."

Section 216. Section 50-31-311, MCA, is amended to read:

"50-31-311. New drug application required. (1) Except as provided in Title 50, chapter 42, ~~no~~ a person may not sell, deliver, offer for sale, hold for sale, or give away any new drug unless:

(a) an application with respect ~~thereto~~ to the drug has been approved and ~~said~~ the approval has not been withdrawn under section 505 of the federal act (21 U.S.C. 355); or

(b) when not subject to the federal act, ~~such~~ the drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling ~~thereof~~ of the drug and, prior to selling or offering for sale ~~such~~ the drug, there has been filed with the department an application setting forth:

(i) full reports of investigations ~~which~~ that have been made to show whether or not ~~such~~ the drug is safe for use and whether ~~such~~ the drug is effective in use;

(ii) a full list of the articles used as components of ~~such~~ the drug;

(iii) a full statement of the composition of ~~such~~ the drug;

(iv) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of ~~such~~ the drug;

(v) ~~such~~ samples of ~~such~~ the drug and of the articles used as components ~~thereof~~ as of the drug that the department may require; and

(vi) specimens of the labeling proposed to be used for ~~such~~ the drug.

(2) An application provided for in subsection (1)(b) ~~shall become~~ becomes effective on the 180th day after the filing ~~thereof~~ of the application. However, if the department finds, after due notice to the applicant and giving ~~him~~ the applicant an opportunity for a hearing, that the drug is not safe

or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling ~~thereof~~ of the drug, ~~the department~~ shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(3) An order refusing to permit an application under this section to become effective may be revoked by the department."

Section 217. Section 50-31-312, MCA, is amended to read:

"50-31-312. Exemptions from new drug application requirement. (1) Section 50-31-311 ~~shall~~ does not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act (21 U.S.C. 355(i) or 357(d));

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug ~~which that~~ is manufactured by an establishment licensed under ~~the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42, chapter 6A, sec. 262)~~ 42 U.S.C. 262; or

(d) any drug ~~which that~~ is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103(30) ~~shall do~~ do not apply to any drug, when ~~such the~~ the drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to ~~such the~~ the drug, ~~which that~~ on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by 50-31-103(30) as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act (21 U.S.C. 355)."

Section 218. Section 50-53-201, MCA, is amended to read:

"50-53-201. License required -- exemption -- validation. (1) Except as provided in subsection (3), a person may not operate a public swimming pool or public bathing place without annually obtaining a license from the department.

1 (2) A separate license is required for each public swimming pool or public bathing place unless
2 more than one public swimming pool is operated on the same premises by the same person, in which case
3 a single license is required for all public swimming pools on the premises.

4 (3) The state or a political subdivision of the state owning or operating a public swimming pool or
5 public bathing place is not required to obtain a license under subsection (1) but ~~must~~ is required to comply
6 with the health and safety requirements in ~~50-53-101 through 50-53-109 and part 1, this part, and the~~
7 rules of the department rules.

8 (4) A license issued by the department is not valid unless signed in accordance with 50-53-206
9 or in accordance with 50-53-207, in the case of an appeal."
10

11 **Section 219.** Section 50-53-202, MCA, is amended to read:

12 **"50-53-202. Application for and right to license.** (1) An application for both an original and
13 renewal license to operate a public swimming pool or public bathing place must be made to the department,
14 must contain the information required by the department, and must be accompanied by the fee provided
15 for in 50-53-203.

16 (2) A license must be issued to an applicant who has satisfied the requirements for a license
17 provided in ~~50-53-101 through 50-53-109~~ part 1, this part, and department rules.

18 (3) Upon issuing a license, the department shall forward the license to the appropriate local health
19 officer for validation as provided in 50-53-206."
20

21 **Section 220.** Section 50-53-203, MCA, is amended to read:

22 **"50-53-203. License fee and late fee -- disposition.** (1) (a) Except as provided in subsection (1)(b),
23 each application for an original or renewal license must be accompanied by a license fee of \$75.

24 (b) The fee for an original or renewal license for a public swimming pool or public bathing place
25 operated in conjunction with a campground, trailer court, work camp, youth camp, hotel, motel,
26 roominghouse, boardinghouse, retirement home, or tourist home is \$50.

27 (2) An operator of a public swimming pool or public bathing place who fails to renew a license by
28 the expiration date provided in 50-53-204 and who operates the public swimming pool or public bathing
29 place in the license year for which a renewal fee was not paid shall, upon renewal, pay to the department
30 a late renewal fee of \$25 in addition to the renewal fee required by subsection (1). Payment of the late

1 renewal fee does not relieve the operator of responsibility for any operation without a license.

2 (3) The department shall deposit 85% of the fees collected under subsection (1) in the state special
3 revenue fund to the credit of the local board inspection fund account created by 50-2-108. Money
4 deposited in the local board inspection fund account is subject to appropriation by the legislature for the
5 purposes of 50-53-218.

6 (4) The department shall deposit 15% of the fees collected under subsection (1) and all the fees
7 collected under subsection (2) in an account in the state special revenue fund to be appropriated by the
8 legislature to the department for the enforcement of ~~50-53-101 through 50-53-109~~ part 1 and this part."

9
10 **Section 221.** Section 50-53-204, MCA, is amended to read:

11 **"50-53-204. License expiration -- nontransferability.** (1) A license issued under ~~50-53-101 through~~
12 ~~50-53-109~~ part 1 and this part expires on December 31 of the year of issuance unless it is suspended or
13 canceled by the department before that date.

14 (2) A license issued under ~~50-53-101 through 50-53-109~~ part 1 and this part is not transferable."

15
16 **Section 222.** Section 50-53-206, MCA, is amended to read:

17 **"50-53-206. Validation of license required -- validation by local officer.** (1) A license issued by the
18 department under ~~50-53-101 through 50-53-109~~ part 1 and this part is not valid until it is signed by the
19 local health officer of the jurisdiction in which the public swimming pool or public bathing place is located.

20 (2) The local health officer shall, within 15 days of receipt of the license, validate or refuse to
21 validate the license. Failure of the officer to validate a license is a refusal for the purposes of 50-53-207."

22
23 **Section 223.** Section 50-53-207, MCA, is amended to read:

24 **"50-53-207. Refusal of health officer to validate -- appeal to board.** (1) A local health officer may
25 refuse to validate a license issued by the department under ~~50-53-101 through 50-53-109~~ part 1 and this
26 part only if the officer determines that the license applicant has not met the requirements for the issuance
27 of a license under ~~50-53-101 through 50-53-109~~ part 1, this part, and the rules of the department rules.
28 If the local health officer refuses to validate a license, the officer shall notify the license applicant and the
29 department of the refusal within 5 days of ~~his~~ the officer's decision. The notice must state the grounds for
30 the refusal.

(2) The license applicant may appeal the decision of the local health officer to the local board of health by filing a written notice of appeal with the officer and the board within 30 days of the officer's refusal or within 30 days of the expiration of the period for the officer's decision under 50-53-206, whichever is first.

(3) Upon filing the notice of appeal, the license applicant is entitled to a hearing before the board to determine the applicant's eligibility for a license under ~~50-53-101 through 50-53-109~~ part 1, this part, and ~~the rules of the department~~ rules. The hearing must be held pursuant to the contested case procedure of the Montana Administrative Procedure Act. If the board finds that the applicant is entitled to a validated license, the ~~chairman~~ presiding officer of the board shall validate the license by signing the license."

Section 224. Section 50-53-211, MCA, is amended to read:

"50-53-211. Denial, suspension, or cancellation of license -- multiple pool facility. (1) The department may deny, suspend, or cancel a license if it finds that the license applicant or licensee has violated ~~50-53-101 through 50-53-109~~ part 1, this part, or ~~the rules of the department~~ rules and has failed or refused to remedy or correct the violation in accordance with the procedure provided in 50-53-213.

(2) If the license of an operator who operates more than one public swimming pool under one license is denied, suspended, or canceled, the use of all of the public swimming pools on the premises must cease unless the department determines that the violation for which the license was denied, suspended, or canceled does not affect the operation or the use of all of the public swimming pools on the premises."

Section 225. Section 50-53-212, MCA, is amended to read:

"50-53-212. Administrative enforcement -- notice -- department hearing. (1) A license may not be denied, suspended, or canceled or corrective action may not be ordered by the department unless the department delivers to the license applicant or licensee a written notice of violation that contains a written statement of the facts constituting the violation and a citation to the statute or rule of the department alleged to have been violated. ~~No further~~ Further administrative enforcement action may not be taken by the department pursuant to the notice if within 10 days after receipt of the notice, the license applicant or licensee complies with the provisions of 50-53-213.

(2) The department may combine with any notice issued under subsection (1) an order for the suspension or cancellation of a license or for corrective action as the department finds necessary to remedy

1 the violation evidenced in the notice. The order becomes final 10 days after service unless within that time
2 the license applicant or licensee requests a hearing pursuant to subsection (4) or submits a corrective action
3 plan in accordance with 50-53-213.

4 (3) The department may combine with any notice or order issued under subsection (1) or (2) an
5 order for the license applicant or licensee to appear before the department within a time specified by the
6 department and show cause why the department should not deny, suspend, or cancel the license or
7 otherwise order compliance with ~~50-53-101 through 50-53-109~~ part 1, this part, and the rules of the
8 department.

9 (4) A hearing request by a license applicant or licensee must be made in writing to the department
10 and must specify the mistake in the facts or law relied on by the department. A hearing held pursuant to
11 this section must be held in accordance with the contested case procedure of the Montana Administrative
12 Procedure Act. Following a hearing, the department may issue an appropriate order. Service of notice or
13 an order mailed by the department is complete upon mailing."

14
15 **Section 226.** Section 50-53-216, MCA, is amended to read:

16 **"50-53-216. Civil penalties -- other enforcement not barred.** (1) A person who violates a provision
17 of ~~50-53-101 through 50-53-109 and part 1~~, this part, ~~the rules of the department~~ rules implementing those
18 sections, an order of the department, or any condition of a license issued by the department is subject to
19 a civil penalty not to exceed \$500 for each violation.

20 (2) An action for collection of a civil penalty under this section does not bar administrative
21 enforcement under 50-53-212, an action for injunctive relief under 50-53-104, or enforcement under
22 50-53-109."

23
24 **Section 227.** Section 50-53-217, MCA, is amended to read:

25 **"50-53-217. Recovery of costs by department or local jurisdiction.** In a civil or criminal action
26 brought by the department or a local jurisdiction to enforce the requirements of ~~50-53-101 through~~
27 ~~50-53-109~~ part 1 and this part, the rules of the department, or any condition of a license or to assess civil
28 penalties and in an action brought by the department to enforce an order of the department, the court may,
29 in the case of an intentional violation of ~~50-53-101 through 50-53-109~~ part 1 and this part, assess the
30 operator of the public swimming pool or public bathing ~~facility~~ place for the costs of any investigation and

the costs of the civil or criminal action, including reasonable attorney fees."

Section 228. Section 50-53-218, MCA, is amended to read:

"50-53-218. Department to pay board for inspections or enforcement, or both. (1) By June 30 of each year, the department shall pay to a local board of health established under 50-2-104, 50-2-106, or 50-2-107 an amount from the local board inspection fund account, created by 50-2-108, for the purpose of inspecting public swimming pools and public bathing places licensed under ~~50-53-101 through 50-53-109~~ part 1 and this part or for taking appropriate enforcement action with respect to the public swimming pools and public bathing places, or for both inspection and enforcement. The payment required by this section must be made to a board only if the board and any local health officer and sanitarian for the jurisdiction of the board meet the program performance standards established by department rules.

(2) Money received by the board pursuant to subsection (1) may be used only for the purpose of inspections and enforcement under ~~50-53-101 through 50-53-109~~ part 1 and this part and must be used to supplement and not supplant other money received by the board for the same purpose.

(3) The department may use money in the local board inspection fund account appropriated to the department for the enforcement of ~~50-53-101 through 50-53-109~~ part 1, this part, and the rules of the department and for inspections to determine compliance with those sections and rules in any local jurisdiction not receiving payment under subsection (1)."

Section 229. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and ~~part~~ 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. ~~The word "building" shall~~ term must be construed as though followed by the words "or part or parts thereof".

(2) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

1 **(b)** The term does not include zoning ordinances.

2 (3) "Construction" means the original construction and equipment of buildings and requirements
3 or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

4 (4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

5 (5) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating
6 equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

7 (6) **(a)** "Factory-built building" means a factory-assembled structure or structures equipped with
8 the necessary service connections but not made so as to be readily movable as a unit or units and designed
9 to be used with a permanent foundation.

10 **(b) "~~Factory-built building~~"** **The term** does not include manufactured housing constructed after June
11 15, 1976, under the ~~HUD~~, National Mobile Home Construction and Safety Standards Act of 1974 (42
12 U.S.C. 5401, et seq.).

13 (7) "Local building department" means the agency or agencies of ~~any~~ **a** municipality charged with
14 the administration, supervision, or enforcement of building regulations, the approval of plans, the inspection
15 of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required
16 by state or local building regulations.

17 (8) "Local legislative body" means the council or commission charged with governing the
18 municipality.

19 ~~(9) "Municipality" means any incorporated city or town and its jurisdictional area as defined by~~
20 ~~subsection (10) of this section.~~

21 ~~(10)(9)~~ (a) "Municipal jurisdictional area" means the area within the limits of an incorporated
22 municipality unless the area is extended at the written request of a municipality.

23 (b) Upon request, the department may approve extension of the jurisdictional area to include:

24 (i) all or part of the area within 4 1/2 miles of the corporate limits of a municipality;

25 (ii) all of any platted subdivision ~~which~~ **that** is partially within 4 1/2 miles of the corporate limits of
26 a municipality; and

27 (iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, ~~which~~ **that** is
28 partially within 4 1/2 miles of the corporate limits of a municipality.

29 (c) Distances ~~shall~~ **must** be measured in a straight line in a horizontal plane.

30 **(10) "Municipality" means any incorporated city or town and its jurisdictional area as defined by**

subsection (9).

(11) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(12) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, ~~which~~ that either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

- (a) travel trailer;
- (b) camping trailer;
- (c) truck camper; or
- (d) motor home.

(13) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(14) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

Section 230. Section 52-2-523, MCA, is amended to read:

"52-2-523. Federal participation. Consistent with federal law, the department of public health and human services, in connection with the administration of services provided and compacts entered into under authority of 52-2-521 through 52-2-528, shall apply for and administer all federal aid for adoption assistance and medical assistance costs in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), Titles ~~IV (e)~~ IV-E and XIX of the Social Security Act, or any other applicable federal laws."

Section 231. Section 52-5-101, MCA, is amended to read:

"52-5-101. Establishment of state youth correctional facilities -- prohibitions. (1) The department of corrections, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate youth in need of these services. The youth must be 10 years of age or older and under 19 years of age. The facilities include but are not limited to the state youth correctional ~~facilities~~ facility ~~at the Mountain View school in Helena and the Pine Hills~~

1 school in Miles City.

2 (2) A youth alleged or found to be a youth in need of supervision may not be placed in a state
3 youth correctional facility as defined in 41-5-103."

4
5 **Section 232.** Section 52-5-108, MCA, is amended to read:

6 **"52-5-108. Medical examination before admission -- records required to accompany child**
7 **committed.** (1) Before a child is admitted for any purpose or for any length of time to ~~the Mountain View~~
8 ~~school~~, the Pine Hills school, or ~~other another~~ facility under an order of commitment to the department of
9 corrections, the child must be examined by a licensed physician. A child committed to ~~one of the schools~~
10 the Pine Hills school or the department must be accompanied by the order of commitment, a medical
11 examination report, an adequate social history, and any school records.

12 (2) The medical examination required under this section must be a current, complete physical
13 examination of the child."

14
15 **Section 233.** Section 52-5-109, MCA, is amended to read:

16 **"52-5-109. Commitment expenses -- arrangement for transportation.** The expenses of committing
17 a child to ~~the Mountain View school~~, the Pine Hills school, or the department of corrections and
18 transporting the child to ~~the Mountain View school~~, the Pine Hills school, or the place designated by the
19 department for it to receive custody, ~~and as well as~~ the expense of returning the child to the county of
20 residence, must be borne by the county of residence. The district judge shall arrange for transportation of
21 the child to the place where the department has directed that it will receive custody of the child."

22
23 **Section 234.** Section 52-5-112, MCA, is amended to read:

24 **"52-5-112. University aid to residents of schools.** The department of corrections may, on the
25 recommendation of the superintendent, authorize a resident of ~~the Mountain View school or Pine Hills~~
26 ~~school~~ a state youth correctional facility who has completed high school and who is otherwise eligible to
27 receive up to \$800 per year toward the resident's expenses incurred in attending a unit of the Montana
28 university system. The money may be used for transportation, clothing, books, board, and room and must
29 be paid in the same manner as other expenses of the school. The board of regents of higher education may
30 waive fees and tuition for these residents pursuant to 20-25-421. No more than eight residents of each

1 ~~school~~ state youth correctional facility may receive these benefits each year. The department shall notify
2 the board of regents before August 1 of each year of the residents that it has designated to receive the
3 benefits for the next school year."

4
5 **Section 235.** Section 52-5-113, MCA, is amended to read:

6 **"52-5-113. Apprehension and return of youth leaving youth correctional facility without**
7 **permission.** A youth who has left a youth correctional facility of the department of corrections without
8 permission may be apprehended and returned by any citizen. The term "youth correctional facility of the
9 department" means any facility under the supervision and control of the department of corrections that has
10 as its primary function the care, training, custody, and control of youth and specifically includes the Pine
11 Hills school ~~for boys and the Mountain View school for girls.~~"

12
13 **Section 236.** Section 53-1-104, MCA, is amended to read:

14 **"53-1-104. Release of arsonist -- notification of department of justice.** (1) Each of the following
15 institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted
16 of arson on the ground of mental disease or defect shall give written notification to the department of
17 justice whenever the person is admitted or released by it:

- 18 (a) Montana state hospital;
19 (b) Montana state prison;
20 (c) ~~Mountain View school~~ women's correctional system;
21 (d) Pine Hills school; or
22 (e) any county or city detention facility.
23 (2) The notification must disclose:
24 (a) the name of the person;
25 (b) where the person is or will be located; and
26 (c) the type of fire the person was involved in."

27
28 **Section 237.** Section 53-1-202, MCA, is amended to read:

29 **"53-1-202. (Temporary) Department of corrections.** (1) Adult and youth correctional services are
30 included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following institutional components to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

- (a) the Montana state prison;
- (b) the Montana women's correctional system; and
- (c) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:
 - (i) in prerelease centers;
 - (ii) under intensive supervision;
 - (iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or
 - (iv) in other appropriate programs.

(3) Youth correctional services consist of the following institutional components to diagnose, care for, train, educate, and rehabilitate youth pursuant to Title 52, chapter 5:

- ~~(a) Mountain View school;~~
- ~~(b)~~ (a) Pine Hills school; and
- ~~(c)~~ (b) any other institution that provides care and services for delinquent youth.

(4) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature.

53-1-202. (Effective on occurrence of contingency) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following institutional components to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

- (a) the Montana state prison;
- (b) the Montana women's correctional system;
- (c) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:
 - (i) in prerelease centers;
 - (ii) under intensive supervision;
 - (iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or
 - (iv) in other appropriate programs; and

(d) the forensic unit at Warm Springs.

(3) Youth correctional services consist of the following institutional components to diagnose, care for, train, educate, and rehabilitate youth pursuant to Title 52, chapter 5:

~~(a) Mountain View school;~~

~~(b)~~ (a) Pine Hills school; and

~~(c)~~ (b) any other institution that provides care and services for delinquent youth.

(4) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature."

Section 238. Section 53-6-110, MCA, is amended to read:

"53-6-110. Report and recommendations on medicaid funding. (1) As a part of the information required in 17-7-111, the department of public health and human services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) As an integral part of the report, the department of public health and human services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

(3) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(4) Whenever the department of public health and human services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative

1 finance committee. The legislative finance committee shall consider the estimate at its next regularly
2 scheduled meeting."

3
4 **Section 239.** Section 53-6-708, MCA, is amended to read:

5 **"53-6-708. Waiver.** The department may seek and obtain any necessary authorization provided
6 under federal law to implement the program, including the waiver of any federal statutes or regulations. The
7 department may not expand eligibility requirements unless authorized by the legislature. The department
8 may seek a waiver of the federal requirement that the combined membership of medicare and medicaid
9 enrollees in a managed health care entity may not exceed 75% of the managed health care entity's total
10 enrollment. The department may not seek a waiver of the inpatient hospital reimbursement methodology
11 in 42 U.S.C. ~~1396(a)(13)~~ 1396a(a)(13) even if the federal agency responsible for administering Title XIX
12 determines that 42 U.S.C. ~~1396(a)(13)~~ 1396a(a)(13) applies to managed health care systems."

13
14 **Section 240.** Section 53-7-101, MCA, is amended to read:

15 **"53-7-101. Definitions.** Unless the context requires otherwise, in this part, the following definitions
16 apply:

17 (1) "Department" means the department of public health and human services provided for in
18 2-15-2201.

19 (2) "Independent living" means control over one's life based upon a choice between acceptable
20 options in a manner that minimizes reliance upon others for making decisions and conducting activities of
21 daily living.

22 (3) "Maintenance" means money payments made in accordance with 53-7-108.

23 (4) "Occupational license" means a license, permit, or other written authority required by any
24 governmental unit to engage in an occupation.

25 (5) "Person with an employment handicap" means the same as "individual with ~~handicap~~ disability" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(8)(A), as may be amended.
26 The term includes any individual who lacks occupation or vocational achievement due to the presence of
27 a physical or mental disability.
28

29 (6) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to
30 correct or substantially reduce the employment handicap of a person within a reasonable length of time.

1 including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital
2 care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding
3 curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health
4 in order to complete a rehabilitation plan.

5 (7) "Prosthetic appliance" means an artificial device necessary to support or take the place of a
6 part of the body or to increase the acuity of a sense organ.

7 (8) "Rehabilitation engineering" means the systematic application of technologies, engineering
8 methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons
9 with employment handicaps. The barriers may exist in the areas of education, rehabilitation, employment,
10 transportation, independent living, and recreation.

11 (9) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for
12 providing services to assist a person with an employment handicap to become independent and productive
13 or employable.

14 (10) "Rehabilitation training" means training provided to a person with an employment handicap to
15 rehabilitate the person's employment handicap. The term includes but is not limited to manual,
16 preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose
17 of achieving broader or more remunerative skills and capacities.

18 (11) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person
19 with an employment handicap to enable the person ~~insofar as~~ to the extent possible to become independent
20 and productive or employable.

21 (12) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational
22 guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering,
23 physical restoration, transportation, occupational licenses, customary occupational tools and equipment,
24 maintenance, training books and materials, group facilities, family services, followup services, and any other
25 goods and services provided for by rule and that the department determines to be necessary to rehabilitate
26 the person."

27
28 **Section 241.** Section 53-7-301, MCA, is amended to read:

29 **"53-7-301. Definitions.** As used in this part, the following definitions apply:

30 (1) (a) "Blindness" means a visual disability in which:

1 (i) a person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses;
2 or

3 (ii) a person's visual field at the widest diameter subtends an angle no greater than 20 degrees.

4 (b) The term includes any visual disability that, in the determination of the department, renders
5 vision seriously defective or causes blindness.

6 (2) "Department" means the department of public health and human services provided for in
7 2-15-2201.

8 (3) "Independent living" means control over one's life based upon a choice between acceptable
9 options in a manner that minimizes reliance upon others for making decisions and conducting activities of
10 daily living.

11 (4) "Low vision" means a visual impairment that, even with correction, remains so severe as to
12 make performance of daily tasks difficult.

13 (5) "Maintenance" means money payments made in accordance with 53-7-310.

14 (6) "Occupational license" means a license, permit, or other written authority required by any
15 governmental unit to engage in an occupation.

16 (7) "Person with an employment handicap" means the same as "individual with ~~handicap~~ a
17 disability" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(8)(A), as may be amended.
18 The term includes any individual who lacks occupation or vocational achievement due to the presence of
19 a physical or mental disability.

20 (8) (a) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to
21 correct or substantially reduce an employment handicap caused by blindness or low vision within a
22 reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment,
23 nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic
24 appliances.

25 (b) The term does not include curative treatment for acute or transitory medical conditions unless
26 necessary to maintain a person's health in order to complete a rehabilitation plan.

27 (9) "Prosthetic appliance" means an artificial device necessary to support or take the place of a
28 part of the body or to increase the acuity of a sense organ.

29 (10) "Rehabilitation engineering" means the systematic application of technologies, engineering
30 methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons

1 with blindness or low vision. The barriers may exist in the areas of education, rehabilitation, employment,
2 transportation, independent living, and recreation.

3 (11) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for
4 providing services to assist a person with blindness or low vision to become independent and productive
5 or employable.

6 (12) "Rehabilitation training" means training provided to a person with blindness or low vision to
7 rehabilitate the person's employment handicap, including but not limited to manual, preconditioning,
8 prevocational, vocational, and supplementary training and training provided for the purpose of achieving
9 broader or more remunerative skills and capacities.

10 (13) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person
11 with blindness or low vision to enable the person ~~insofar as~~ to the extent possible to become independent
12 and productive or employable.

13 (14) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational
14 guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering,
15 physical restoration, transportation, occupational licenses, customary occupational tools and equipment,
16 maintenance, training books and materials, group facilities, family services, followup services, and any other
17 goods and services provided for by rule and that the department determines to be necessary to rehabilitate
18 the person."
19

20 **Section 242.** Section 53-19-102, MCA, is amended to read:

21 **"53-19-102. Definitions.** As used in this part, the following definitions apply:

22 (1) "Community home for persons with severe disabilities" means a facility licensed by the
23 department, as provided for in 52-4-201 through 52-4-205.

24 (2) "Department" means the department of public health and human services established in
25 2-15-2201.

26 (3) "Disability" means a permanent physical or mental condition recognized as a disability by Title
27 VII of the federal Rehabilitation Act of 1973, 29 U.S.C. 796, et seq., as may be amended.

28 (4) "Live and function independently" means to have control over one's life based upon a choice
29 between acceptable options in a manner that minimizes reliance upon others for making decisions and
30 conducting activities of daily living.

(5) "Person with severe disabilities" means the same as "individual with a severe ~~handicap~~ disability" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(15)(B), as may be amended. The term includes an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of the physical or mental disability that the services provided under this part are required in order for the individual to achieve a greater level of independence in functioning in family or community or in engaging in or continuing in employment."

Section 243. Section 60-2-208, MCA, is amended to read:

"60-2-208. Seeding along highways. (1) After a federal-aid or state highway is constructed, the department shall seed borrow pits, slopes, and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed ~~shall~~ must be certified.

(2) The department shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices, and grass species from the Montana extension service, the experiment station, and the ~~soil~~ natural resources conservation service.

(3) After a right-of-way in open range has been fenced pursuant to 60-7-103, the department may seed the land within the fence ~~to~~ with a grass ~~which that~~ which may be cropped for hay and may lease ~~such lands~~ the land or sell the right to take ~~such the~~ such hay to qualified persons."

Section 244. Section 60-11-121, MCA, is amended to read:

"60-11-121. Legislative findings. (1) The legislature finds that it is in the interests of the state of Montana to preserve and encourage, whenever possible, Montana's railroad transportation infrastructure, especially:

(a) those railroads classified as Class III carriers under 49 CFR, chapter 40 ~~X~~, that operate mainly within the state; and

(b) those railroads within the state that are eligible for rail freight assistance programs under 49 U.S.C. 1654.

(2) The legislature further finds that:

(a) the railroad transportation infrastructure of the state is enhanced by the development and improvement of intermodal transportation facilities by port authorities created under Title 7, chapter 14,

1 part 11; and

2 (b) abandonment of railroad branch lines and the increased demands for shipping have a negative
3 impact on the highways of the state.

4 (3) The legislature further finds that the preservation of those railroads described in subsection
5 (1)(b) and the development and improvement of intermodal transportation facilities are necessary to
6 enhance access to markets, to mitigate rural isolation and long-term negative impacts on the highways of
7 the state, and to promote the efficiency and effectiveness of the state's transportation system.

8 (4) The legislature declares that loans and grants made available under 60-11-120 to railroads and
9 to port authorities are in the interest of the state."

10
11 **Section 245.** Section 61-2-108, MCA, is amended to read:

12 "61-2-108. **Funding allocation for programs to prevent or reduce drinking and driving.** If the county
13 in which the violation or violations occurred has initiated and maintained a drinking and driving prevention
14 program as provided in 61-2-106, the department shall transmit the county portion of the proceeds of the
15 license reinstatement fees collected in that county to the county treasurer, as provided in 61-2-107(2)(a),
16 at the end of each quarter."

17
18 **Section 246.** Section 61-3-446, MCA, is amended to read:

19 "61-3-446. **Retention of special license plates.** If during a registration year the holder of special
20 license plates issued under 61-3-332(10)(b) through ~~(10)(f)~~ (10)(g) disposes of the vehicle to which the
21 plates are affixed, ~~he~~ the holder shall retain the plates and may affix them to another vehicle."

22
23 **Section 247.** Section 61-3-463, MCA, is amended to read:

24 "61-3-463. **Collegiate license plates.** (1) Subject to the provisions of 61-3-332(3) and the
25 requirement that collegiate license plates must have a white reflectorized background, the department shall
26 design, cause to be manufactured, and issue collegiate license plates as provided in 61-3-464 through
27 61-3-466.

28 (2) After consultation with each institution, the department shall prescribe the color and insignia
29 to be displayed on the collegiate license plates for each institution.

30 (3) In addition to each institution's distinctive color and insignia provided in subsection ~~(1)~~ (2), each

1 collegiate license plate must:

2 (a) be imprinted consecutively with distinctive numerals from 1 through 99999, capital letters A
3 through Z, or a combination of numerals and letters; and

4 (b) bear a nonremovable sticker denoting the correct county designation under 61-3-332.

5 (4) The department shall determine the minimum and maximum number of characters, including
6 both numerals and letters, on the collegiate license plates.

7 (5) ~~No~~ An issue of collegiate license plates may not be ordered ~~and~~ or manufactured for any
8 individual institution unless at least 400 sets of plates are ordered and prepaid."
9

10 **Section 248.** Section 61-3-502, MCA, is amended to read:

11 **"61-3-502. Sales tax on new motor vehicles -- exemptions.** (1) In consideration of the right to use
12 the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers,
13 semitrailers, and housetrailer, for which a license is sought and an original application for title is made. The
14 tax must be paid by the purchaser when the purchaser applies for an original Montana license through the
15 county treasurer. For purposes of this section, "new motor vehicle" means a new motor vehicle for which
16 original registration is sought or a motor vehicle previously furnished without charge by a dealer to a school
17 district for use in a state-approved traffic education program, whether or not titled by the dealer or the
18 school district, and for which original registration is sought.

19 (2) Except as provided in subsections (4) and (5), the sales tax is:

20 (a) 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter
21 of the year or for a registration period other than a calendar year or calendar quarter;

22 (b) 1 1/8% of the list price during the second quarter of the year;

23 (c) 3/4 of 1% during the third quarter of the year;

24 (d) 3/8 of 1% during the fourth quarter of the year.

25 (3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry
26 list price, the department may use published price lists.

27 (4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is
28 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the
29 new vehicle is purchased.

30 (5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1%

1 of the f.o.b. factory list price or f.o.b. port-of-entry list price.

2 (6) The proceeds from this tax must be remitted to the state treasurer every 30 days for credit to
3 the highway nonrestricted account of the state special revenue fund. The county treasurer shall retain 5%
4 of the taxes collected to pay for the cost of administration.

5 (7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the
6 calendar year in which the original application for title is made.

7 (8) A new motor vehicle may not be registered or licensed unless the application for registration
8 is accompanied by a statement of origin that is furnished by the dealer selling the vehicle and that shows
9 that the vehicle has not previously been registered or owned, except as otherwise provided in this section,
10 by any person, firm, corporation, or association other than a new motor vehicle dealer holding a franchise
11 or distribution agreement from a new car manufacturer, distributor, or importer.

12 (9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits
13 of incorporated cities or towns and within 15 miles from the limits are exempt from the provisions of
14 subsection (1).

15 (b) Motor vehicles brought or driven into Montana by nonresident, migratory, bona fide agricultural
16 workers who are temporarily employed in agricultural work in this state, when those motor vehicles are
17 used exclusively for transportation of agricultural workers, are also exempt from the provisions of
18 subsection (1).

19 (c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from
20 the provisions of subsection (1):

21 (i) when moving to or from a dealer's place of business when unloaded or loaded with dealer's
22 property only; and

23 (ii) in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being
24 demonstrated in the course of the dealer's business.

25 (d) Motor vehicles owned or controlled by a special district, as defined in 18-8-202, are exempt
26 from subsection (1).

27 (e) A vehicle registered under 61-3-456 is exempt from the provisions of subsection (1)."

28
29 **Section 249.** Section 61-4-310, MCA, is amended to read:

30 **"61-4-310. Single movement permit -- fee -- limitation -- county treasurer to issue. (1) (a) A**

1 vehicle, subject to license under this title, or a mobile home may be moved unladen upon the highways of
2 this state from a point within the state to a point of destination. The county treasurer at the point of the
3 origin of the movement shall issue a special permit for the vehicle in lieu of fees required under 61-3-321
4 and part 2 of chapter 10 of this title, upon application presented to the county treasurer in a form provided
5 by the department, upon exhibiting to the county treasurer proof of ownership and evidence that the
6 personal property taxes on the vehicle, if any are due, have been paid, and upon payment of a fee of \$5.
7 The permit ~~must~~ is not ~~be~~ in lieu of fees and permits required under 61-4-301 and 61-4-302.

8 (b) For purposes of this section, a mobile home is considered unladen when all items are removed
9 except the equipment originally installed by the manufacturer and the personal effects of the owners.

10 (2) The permit ~~must be~~ is for the transit of the vehicle or mobile home only, and the vehicle or
11 mobile home may not at the time of the transit be used for the transportation of any persons, except the
12 driver, or any property for compensation or otherwise and ~~must be~~ is for one transit only between the
13 points of origin and destination as set forth in the application and shown on the permit.

14 (3) A junk vehicle being driven or towed to a motor vehicle wrecking facility or a motor vehicle
15 graveyard for disposal is exempt from the provisions of this section. The definitions in 75-10-501 apply to
16 this subsection."
17

18 **Section 250.** Section 61-5-121, MCA, is amended to read:

19 **"61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses ~~provided for~~
20 ~~in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), and commercial driver's~~
21 ~~licenses provided for in 61-5-111(7)(c), and from~~ duplicate driver's licenses provided for in 61-5-114 is as
22 follows:

23 (a) The amount of 25% of each driver's license fee and of each duplicate driver's license fee must
24 be deposited into an account in the state special revenue fund. The department shall transfer the funds
25 from this account to the Montana highway patrol officers' retirement pension trust fund as provided in
26 19-6-404.

27 (b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount
28 of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the
29 county general fund.

30 (ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must

1 be deposited into the general fund.

2 (c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount
3 of 5% of each motorcycle endorsement must be deposited into the county general fund.

4 (ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must
5 be deposited into the general fund.

6 (d) The amount of 26.25% of each driver's license fee and of each duplicate driver's license fee
7 must be deposited into the state traffic education account.

8 (e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount
9 of 54.55% of each driver's license fee and of each duplicate driver's license fee must be deposited into the
10 state general fund.

11 (f) If the fee is collected by the county treasurer or other agent of the department, the amount of
12 3.75% of each commercial driver's license fee must be deposited into the county general fund, otherwise
13 all of the fee must be deposited in the state general fund.

14 (g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state
15 traffic education account in the state special revenue fund.

16 (2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and
17 duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county
18 treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county
19 general fund. The county treasurer or agent shall then remit to the state treasurer all remaining fees,
20 together with a statement indicating what portion of each fee is to be deposited into the account in the
21 state special revenue fund as provided in subsection (1)(a) and the state general fund. The state treasurer,
22 upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d)
23 through (1)(g).

24 (b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and
25 duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer,
26 together with a statement indicating what portion of each fee is to be deposited into the account in the
27 state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state
28 general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided
29 in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."
30

1 **Section 251.** Section 61-5-126, MCA, is amended to read:

2 **"61-5-126. Providing information to selective service system.** At the request of the director of the
3 selective service system, provided for in 50 App. U.S.C. 460, the department shall provide a list of persons
4 born in specified years who are holders of driver's licenses for the exclusive purpose of ~~assuring~~ ensuring
5 compliance with the military draft registration requirements of the federal Military Selective Service Act (50
6 App. U.S.C. 451, et seq.). The department shall notify the persons that information regarding them was
7 released to the selective service system. The department may not provide the selective service system with
8 the social security or driver's license numbers of persons on the list for any purpose."

9
10 **Section 252.** Section 61-8-356, MCA, is amended to read:

11 **"61-8-356. Prohibition against parking or leaving vehicles on public property -- presumption of**
12 **ownership.** (1) A vehicle may not be parked or left standing upon the right-of-way of a public highway for
13 a period longer than 48 hours, or upon a city street, or upon ~~or upon~~ or state, county, or city property for a period
14 longer than 5 days.

15 (2) The abandonment of a motor vehicle on a public highway, a city street, public property, or
16 private property creates a prima facie presumption that the last-registered owner of the motor vehicle is
17 responsible for the abandonment and is liable for the costs incurred in removing, storing, and disposing of
18 the abandoned vehicle, less the amount realized if the motor vehicle is sold.

19 (3) The filing of a verified theft report with a law enforcement agency prior to the abandonment
20 relieves the last-registered owner of liability under subsection (2)."

21
22 **Section 253.** Section 61-8-407, MCA, is amended to read:

23 **"61-8-407. Definition of alcohol concentration.** For purposes of 16-6-305, ~~61-8-401, and~~
24 ~~61-8-406~~ 23-2-535, 67-1-211, and this title, "alcohol concentration" means either grams of alcohol per
25 100 milliliters of blood, grams of alcohol per 210 liters of breath, or grams of alcohol per 75.3 milliliters of
26 urine."

27
28 **Section 254.** Section 61-8-422, MCA, is amended to read:

29 **"61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture**
30 **-- penalty.** (1) It is unlawful for the owner of a vehicle subject to actions under 61-5-212(3) ~~or (6)~~ or

forfeiture under 61-8-714 or 61-8-722 to transfer, sell, or encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise terminated.

(2) The prohibition against transfer of title may not be stayed pending the determination of an appeal from the conviction on the underlying charge.

(3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned in the county jail for not more than 2 years, fined an amount not more than \$20,000, or both."

Section 255. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

(2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than \$300 or more than \$500.

(3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than \$500 or more than \$1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use,

1 or other act on which the forfeiture is sought.

2 (4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be
3 punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less
4 than \$1,000 or more than \$10,000. Except as provided in subsection (9), notwithstanding any other
5 provision providing for suspension of execution of a sentence imposed under this subsection, the imposition
6 or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense
7 may not be suspended.

8 (5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and
9 suspension of driver's licenses, apply to any conviction under 61-8-406.

10 (6) In addition to the punishment provided in this section, regardless of disposition, the defendant
11 shall complete an alcohol information course at an alcohol treatment program approved by the department
12 of public health and human services, which must include alcohol or drug treatment, or both, in accordance
13 with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the
14 commencement of the education or treatment, notify the court that the defendant has been enrolled in a
15 course or treatment program. If the defendant fails to attend the course or the treatment program, the
16 counselor shall notify the court of the failure.

17 (7) For the purpose of determining the number of convictions under this section, "conviction"
18 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a
19 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or
20 another state, which forfeiture has not been vacated. An offender is considered to have been previously
21 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the
22 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent
23 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been
24 an additional conviction for an offense under this section for a period of 5 years after a prior conviction
25 under this section, then all records and data relating to the prior conviction are confidential criminal justice
26 information, as defined in ~~45-5-103~~ 44-5-103, and public access to the information may only be obtained
27 by district court order upon good cause shown.

28 (8) For the purpose of calculating subsequent convictions under this section, a conviction for a
29 violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

30 (9) The court may order that a term of imprisonment imposed under this section be served in

1 another facility made available by the county and approved by the sentencing court. The defendant, if
2 financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions
3 on the defendant's ability to leave the premises of the facility and require that the defendant follow the
4 rules of that facility. The facility may be, but is not required to be, a community-based prerelease center
5 as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the
6 sentencing court.

7 (10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or
8 subsequent offense, the court may order that a term of imprisonment imposed under this section be served
9 by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

10 (11) A court may not defer imposition of sentence under this section."
11

12 **Section 256.** Section 61-12-201, MCA, is amended to read:

13 **"61-12-201. Appointment of employees and out-of-state personnel as peace officers -- definition.**

14 (1) The director of transportation may appoint employees of the department as peace officers to carry out
15 this part. The employees appointed may include only those employees of the department who are employed
16 in the administration of the motor carrier services functions of the department and employees of other
17 states. Out-of-state personnel may be appointed only for the purpose of enforcing gross vehicle weight laws
18 at joint weigh station facilities. Each employee appointed must be issued a certificate of appointment and
19 execute an oath of office, which must be entered into the records of the department.

20 (2) The department may enter into joint weigh station agreements with other states. If the
21 department enters into a joint weigh station agreement with another state, the department may not reduce
22 staff levels in the motor carrier services division of the department as a result of the agreement but may
23 reassign staff. However, this subsection does not apply to a reduction in force for the department as a
24 whole.

25 (3) As used in this part, "department" means the department of transportation."
26

27 **Section 257.** Section 69-1-224, MCA, is amended to read:

28 **"69-1-224. Determination of fee.** (1) On or before August 31 of each year, the department of
29 revenue shall:

30 (a) determine the total gross operating revenue generated by all regulated activities within this state

1 for all regulated companies for the previous fiscal year;

2 (b) compute the percentage, subject to revision as provided in subsection (2), of the amount
3 determined in subsection (1)(a) that will produce an amount equal to the current appropriation to the office
4 of the consumer counsel, except that a regulated company owned and operated by any municipal
5 corporation within this state may not be required to pay a sum in excess of ~~.06~~ 0.06 of 1% of its gross
6 operating revenue;

7 (c) adjust the percentage multiplier computed in subsection (1)(b) to ensure that sufficient funds
8 are generated to meet the appropriation and that excess funds are not generated or retained by:

9 (i) determining the appropriation to the office of the consumer counsel for the previous fiscal year
10 and comparing it to the fees collected from the previous fiscal year;

11 (ii) reducing or increasing the percentage determined in subsection (1)(b) for the current year in
12 order to account for any difference determined in subsection (1)(c)(i); and

13 (iii) if necessary, reducing the revenue to be collected for the current year by any funds remaining
14 unspent at the close of the prior fiscal year; and

15 (d) give notice by mail to each regulated company of the percentage to be applied to the gross
16 operating revenue reported under 69-1-223(2) to determine the amount of the fee to be paid.

17 (2) (a) The department of revenue shall adjust the percentage multiplier if the department considers
18 a change necessary to meet or to not exceed the amount to be raised by the fee because of:

19 (i) fluctuations in the actual gross operating revenue subject to the fee; or

20 (ii) submission and approval of a budget amendment authorizing the spending of money from a
21 contingency appropriation included in the appropriation measure for the office of the consumer counsel and
22 authorized to be raised by means of the fee.

23 (b) Adjustments of the percentage multiplier are subject to the exception provided in subsection
24 (1)(b) for municipally owned and operated regulated companies.

25 (c) Regulated companies must be given at least 30 days' notice of any change in the percentage
26 multiplier.

27 (d) Any change in the percentage multiplier is effective at the beginning of the next calendar
28 quarter.

29 (3) In the event that the fee charged in 1 year is in excess of the amount actually expended in that
30 year, the excess must be deducted from the amount required to be raised by the fee for the next year

1 before the determination required by subsection (1) is made. Money remaining unspent at the close of the
2 fiscal year must be used to reduce the percentage calculated in ~~69-1-224~~ subsection (1) in the subsequent
3 fiscal year.

4 (4) All fees paid by a regulated company pursuant to this section are immediately recoverable by
5 the regulated company in its rates and charges. Within 30 days after the issuance by the department of
6 revenue of the notice required by subsection (1), the public service commission shall by separate order
7 authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees
8 levied by this part."

9
10 **Section 258.** Section 69-12-314, MCA, is amended to read:

11 **"69-12-314. Class D motor carrier certificate.** (1) Class D carriers shall conduct operations
12 pursuant to a certificate of public convenience and necessity issued by the commission authorizing the
13 transportation of the commodities described in 69-12-301(5). Class D carriers when applying for a new or
14 additional authority shall file an application with the commission in accordance with the requirements of
15 this chapter and the rules of the commission.

16 (2) A motor carrier may not possess a Class D motor carrier certificate or operate as a Class D
17 motor carrier unless the motor carrier actually engages in the transportation of ~~ashes, trash, waste, refuse,~~
18 ~~rubbish, garbage, and organic and inorganic matter~~ on a regular basis as part of the motor carrier's usual
19 business operation."

20
21 **Section 259.** Section 69-12-406, MCA, is amended to read:

22 **"69-12-406. Restriction on transportation of certain waste.** Except as provided in 69-12-324, ~~no~~
23 ~~a Class A, B, or C carrier will~~ may not be authorized or permitted to transport ~~ashes, trash, waste, refuse,~~
24 ~~rubbish, garbage, or organic and inorganic matter~~ within the state. This restriction does not apply to
25 recyclables."

26
27 **Section 260.** Section 72-16-331, MCA, is amended to read:

28 **"72-16-331. Definitions for alternate valuation purposes.** As used in 72-16-331 through
29 72-16-349, the following definitions apply:

30 (1) "Active management" means ~~the~~ making of management decisions of a business, other than

1 the daily operating decisions.

2 (2) "Adjusted value" means:

3 (a) in the case of a gross estate, the gross value of all transfers subject to the tax imposed by this
4 part, determined without regard to 72-16-331 through 72-16-349, reduced by the amount of unpaid
5 mortgages and indebtedness;

6 (b) in the case of real or personal property, the value of the property for the purposes of this part,
7 determined without regard to 72-16-331 through 72-16-349, reduced by the amount of unpaid mortgages
8 and indebtedness.

9 (3) "Agreement" means a written agreement signed by each person in being who has an interest,
10 whether or not ~~he~~ the person is in possession, in any property designated in ~~such~~ the agreement consenting
11 to the application of 72-16-333 with respect to ~~such~~ the property.

12 (4) "Department" means the department of revenue.

13 (5) "Disabled" means an individual who has a mental or physical impairment that renders ~~him~~ the
14 person unable to materially participate in the operation of a farm or other business.

15 (6) "Eligible qualified heir" means a qualified heir who:

16 (a) is the surviving spouse of the decedent;

17 (b) has not attained 21 years of age;

18 (c) is disabled; or

19 (d) is a student.

20 (7) "Farm" means truck farms, ranches, nurseries, ranges, greenhouses, orchards, woodlands, or
21 structures used primarily for raising agricultural or horticultural commodities. The term includes stock, dairy
22 animals, poultry, fur-bearing animals, and fruit.

23 (8) "Farming purposes" means:

24 (a) cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including
25 the raising, shearing, feeding, caring for, training, and managing of animals on a farm;

26 (b) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural
27 commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly
28 produces more than one-half of the commodity so treated; or

29 (c) (i) planting, cultivating, caring for, or cutting trees; or

30 (ii) preparing, other than milling, trees for market.

1 (9) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific
2 section of that code is a reference to that section as it may be labeled or amended.

3 (10) "Involuntary conversion" means a compulsory or involuntary conversion within the meaning
4 of section 1033 of the Internal Revenue Code (26 U.S.C. 1033).

5 (11) "Material participation" is determined in a manner similar to the manner used for the purposes
6 of section 1402(a)(1) of the Internal Revenue Code (26 U.S.C. 1402(a)(1)).

7 (12) (a) "Member of the family" means, with respect to any individual, ~~the individual's~~:

8 (i) the individual's ancestor;

9 (ii) the individual's spouse and the lineal descendants of the individual's spouse;

10 (iii) the individual's lineal descendant;

11 (iv) the lineal descendants of the individual's parents.

12 (b) "Member of the family" also includes a spouse of:

13 (i) the individual's lineal descendants;

14 (ii) the lineal descendants of the individual's spouse; or

15 (iii) the lineal descendants of the individual's parents.

16 (c) For purposes of this subsection (12), a legally adopted child of an individual is treated as a child
17 of the individual by blood.

18 (13) "Net share rental" means the excess of:

19 (a) the value of the produce received by a lessor of land on which ~~such~~ the produce is grown;

20 (b) divided by the cash operating expenses of growing such produce ~~which that~~, under the lease,
21 are paid by the lessor.

22 (14) "Qualified exchange property" means real property that is to be used for the qualified use set
23 forth in subsection (18).

24 (15) "Qualified heir" means, with respect to any property, a member of the decedent's family who
25 acquired the property or to whom the property passed from the decedent. If a qualified heir disposes of any
26 interest in qualified real property to any member of ~~his~~ the qualified heir's family, ~~such the~~ member ~~shall~~
27 must thereafter be treated as the qualified heir with respect to ~~such the~~ interest.

28 (16) "Qualified real property" means real property located in this state that was acquired from or
29 passed from the decedent to a qualified heir of the decedent and that on the date of the decedent's death
30 was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

1 (a) 50% or more of the adjusted value of the gross estate consists of the adjusted value of real
2 or personal property that:

3 (i) on the date of the decedent's death was being used for a qualified use by the decedent or a
4 member of the decedent's family; and

5 (ii) was acquired from or passed from the decedent to a qualified heir of the decedent;

6 (b) 25% or more of the adjusted value of the gross estate consists of the adjusted value of real
7 property that meets the requirements of ~~(a)(ii) and (c) of this subsection~~ subsections (16)(a)(ii) and (16)(c);

8 (c) during the 8-year period ending on the date of the decedent's death there have been periods
9 aggregating 5 years or more during which:

10 (i) the real property was owned by the decedent or a member of the decedent's family and used
11 for a qualified use by the decedent or a member of the decedent's family; and

12 (ii) there was material participation by the decedent or a member of the decedent's family in the
13 operation of the farm or other business;

14 (d) the real property is designated in the agreement referred to in subsection (3) ~~of this section~~;
15 and

16 (e) if an election is made with respect to qualified woodland, trees growing on ~~such~~ the woodland
17 may not be treated as a crop.

18 (17) (a) "Qualified replacement property" means:

19 (i) in the case of an involuntary conversion as described in section 1033(a)(1) of the Internal
20 Revenue Code (26 U.S.C. 1033(a)(1)), any real property into which the real property is converted;

21 (ii) in the case of an involuntary conversion as described in section 1033(a)(2) of the Internal
22 Revenue Code (26 U.S.C. 1033(a)(2)), any real property purchased by the qualified heir during the period
23 specified in section 1033(a)(2)(A) of the Internal Revenue Code (26 U.S.C. 1033(a)(2)(A)) for the purpose
24 of replacing the qualified real property.

25 (b) ~~"Qualified replacement property" only~~ The term includes only property that is to be used for
26 the qualified use set forth in ~~(a) or (b)~~ (a) or (b) of subsection (18) (a) or (b) of this section under which the
27 qualified real property qualified under 72-16-333.

28 (18) (a) "Qualified use" means devotion of the property to any of the following:

29 (i) use as a farm for farming purposes; or

30 (ii) use in a trade or business other than the trade or business of farming.

(b) In the case of real property that meets the requirements of subsection (16)(c), residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use ~~shall~~ must be treated as real property devoted to the qualified use.

(19) "Qualified woodland" means any real property that:

(a) is used in timber operations; and

(b) is an identifiable area of land, such as an acre or other area, for which records are normally maintained in conducting timber operations.

(20) "Student" means an individual as defined by section 151(e)(4) of the Internal Revenue Code (26 U.S.C. 151(e)(4)).

(21) "Timber operations" means:

(a) the planting, cultivating, caring for, or cutting of trees; or

(b) the preparation, other than milling, of trees for market."

Section 261. Section 72-16-479, MCA, is amended to read:

"72-16-479. Priorities. (1) A lien filed under 72-16-472 is not valid:

(a) as against real property tax and special assessment liens;

(b) in the case of real property subject to a lien for repair or improvement, as against a construction lienor; or

(c) as against a security interest set forth in ~~paragraph 3 of~~ section 6323(c)(3) of the Internal Revenue Code (26 U.S.C. 6323(c)(3)), whether the security interest came into effect before or after the tax lien filing.

(2) Subsections (1)(b) and (1)(c) of this section do not apply to any security interest that came into existence after the date on which the department filed notice that payment of the deferred amount has been accelerated under 72-16-464."

Section 262. Section 72-17-213, MCA, is amended to read:

"72-17-213. Routine inquiry and required request -- search and notification. (1) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an

1 anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss
2 the option to make or refuse to make an anatomical gift and request the making of an anatomical gift
3 pursuant to 72-17-214(1). The request must be made with reasonable discretion and sensitivity to the
4 circumstances of the family. A request is not required if the gift is not suitable, based upon accepted
5 medical standards, for a purpose specified in 72-17-202 or if there are medical or emotional conditions
6 under which the request would contribute to severe emotional distress. An entry must be made in the
7 medical record of the patient, stating the name and affiliation of the individual making the request and the
8 name, response, and relationship to the patient of the person to whom the request was made. The
9 department shall adopt rules to implement this subsection.

10 (2) The following persons shall make a reasonable search for a document of gift or other
11 information identifying the bearer as a donor or as an individual who has refused to make an anatomical
12 gift:

13 (a) a law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual
14 whom the searcher believes is dead or near death; and

15 (b) a hospital, upon the admission of an individual at or near the time of death, if there is not
16 immediately available any other source of that information.

17 (3) If a document of gift or evidence of refusal to make an anatomical gift is located by the search
18 required by subsection ~~(3)(a)~~ (2)(a) and the individual or body to whom it relates is taken to a hospital, the
19 hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

20 (4) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been
21 made pursuant to 72-17-214(1) or a release and removal of a part has been permitted pursuant to
22 72-17-215, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital
23 shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate
24 procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or
25 release and removal of a part.

26 (5) A person who fails to discharge the duties imposed by this section is not subject to criminal
27 or civil liability but is subject to appropriate administrative sanctions."

28
29 **Section 263.** Section 75-1-1101, MCA, is amended to read:

30 **"75-1-1101. Environmental contingency account objectives.** (1) There is created an environmental

1 contingency account within the state special revenue fund established in 17-2-102. The environmental
2 contingency account is controlled by the governor.

3 (2) At the beginning of each biennium, \$175,000 must be allocated to the environmental
4 contingency account from the interest income of the resource indemnity trust fund with the following
5 exceptions:

6 (a) if at the beginning of any biennium the unobligated cash balance in the environmental
7 contingency account equals or exceeds \$750,000, allocation ~~will~~ may not be made; and

8 (b) if at the beginning of any biennium the unobligated cash balance in the environmental
9 contingency account is less than \$750,000, then an amount less than or equal to the difference between
10 the unobligated cash balance and \$750,000, but not to exceed \$175,000, must be allocated to the
11 environmental contingency account from the interest income of the resource indemnity trust fund.

12 (3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental
13 contingency account upon the authorization of the governor to meet unanticipated public needs consistent
14 with the following objectives:

15 (a) to support renewable resource development projects in communities that face an emergency
16 or imminent need for the services or to prevent the physical failure of a project;

17 (b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent
18 physical threat or during an emergency, not including:

19 (i) natural disasters adequately covered by other funding sources; or

20 (ii) fire;

21 (c) to respond to an emergency or imminent threat to persons, property, or the environment caused
22 by mineral development;

23 (d) to respond to an emergency or imminent threat to persons, property, or the environment caused
24 by a hazardous material; and

25 (e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other
26 necessary actions, including the construction of facilities, to respond to actual or potential threats to
27 persons, property, or the environment caused by hazardous wastes or other hazardous materials.

28 (4) Interest from funds in the environmental contingency account accrues to the ~~resource indemnity~~
29 ~~trust interest account~~ general fund.

30 (5) The governor shall submit, as a part of the information required by 17-7-111, a complete

1 financial report on the environmental contingency account, including a description of all expenditures made
2 since the preceding report."

3
4 **Section 264.** Section 75-2-101, MCA, is amended to read:

5 "75-2-101. **Short title.** ~~This Parts 1 through 4 of this chapter shall be~~ are known and may be cited
6 as the "Clean Air Act of Montana"."

7
8 **Section 265.** Section 75-3-103, MCA, is amended to read:

9 "75-3-103. **Definitions.** The definitions used in this chapter are intended to be consistent with
10 those used in 10 CFR ~~1-199 1-171~~ and 49 CFR ~~173.389 173.399~~ 173.401 through 173.478, subpart I.
11 Unless the context requires otherwise, in this chapter, the following definitions apply:

12 (1) "Byproduct material" means:

13 (a) any radioactive material (except special nuclear material) yielded in, or made radioactive by
14 exposure to the radiation incident to, the process of producing or using special nuclear material; and

15 (b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from
16 any ore processed primarily for its source material content.

17 (2) "Department" means the department of environmental quality.

18 (3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or
19 permanent long-term storage with no intention of or provision for subsequent removal.

20 (4) "General license" means a license effective pursuant to rules promulgated by the department
21 without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or
22 equipment using quantities of byproduct, source, special nuclear materials, or other radioactive material
23 occurring naturally or produced artificially. General licenses are effective without the filing of applications
24 with the department or the issuing of licensing documents to the user.

25 (5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed
26 electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared,
27 or ultraviolet light.

28 (6) "Large quantity radioactive material" ~~is that quantity of radioactive material~~ means highway
29 route controlled quantity as defined in 49 CFR ~~173.389(b)~~ 173.403.

30 (7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public

1 or private institution, group, agency, political subdivision or agency of a political subdivision, and any legal
2 successor, representative, agent, or agency of the foregoing, other than the United States nuclear
3 regulatory commission, any successor, or federal agencies licensed by the nuclear regulatory commission.

4 (8) "Registration" means the registering with the department by the legal owner, user, or authorized
5 representative of sources of ionizing radiation in the manner prescribed by rule.

6 (9) "Source material" means uranium, thorium, or any other material that the department or the
7 United States nuclear regulatory commission declares by order to be source material or ores containing one
8 or more of the foregoing materials in a concentration that the department or the nuclear regulatory
9 commission declares by order to be source material after the nuclear regulatory commission has determined
10 the material in that concentration to be source material.

11 (10) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233
12 or in the isotope 235, and any other material that the department or the United States nuclear regulatory
13 commission or any successor declares by order to be special nuclear material or any material artificially
14 enriched by any of the foregoing but does not include source material.

15 (11) "Specific license" means a license issued after application to use, manufacture, produce,
16 transfer, receive, acquire, own, or possess quantities of or devices or equipment using quantities of
17 byproduct, special nuclear materials, or other radioactive material occurring naturally or produced
18 artificially."

19
20 **Section 266.** Section 75-5-621, MCA, is amended to read:

21 **"75-5-621. Emergencies.** (1) Notwithstanding other provisions of this chapter, if the department
22 finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule
23 issued under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects
24 of which will not be remedied immediately after the commission or cessation of the act, the department
25 may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The
26 order is effective immediately upon receipt by the person to whom it is directed, unless the department
27 provides otherwise.

28 (2) Notice of the order must conform to the requirements of 75-5-611(1) so far as practicable. The
29 notice must indicate that the order is an emergency order.

30 (3) Upon issuing an order, the department shall fix a place and time for a hearing before the board,

not later than 5 days after issuing the order unless the person to whom the order is directed requests a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing must be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board must be accompanied by the ~~statement-specified~~ information required in 75-5-611~~(5)~~(6). An action for review of the order of the board may be initiated in the manner specified in 75-5-641. The initiation of an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section."

Section 267. Section 75-5-1113, MCA, is amended to read:

"75-5-1113. Loans. (1) Upon approval of a project by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private concern to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private concern complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ~~assure~~ ensure sufficient ~~revenues~~ revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than 20 years;

(c) agreeing to maintain proper financial records in accordance with recognized government accounting procedures and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information

1 demonstrating its cost-effectiveness and environmental information necessary for the department and the
2 department of natural resources and conservation to fulfill their responsibilities under the Montana
3 Environmental Policy Act and rules adopted to implement that act;

4 (g) complying with plan and specification requirements for public wastewater systems established
5 by the board; and

6 (h) providing for proper construction inspection and project management.

7 (2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest
8 paid in annual or more frequent installments, the first of which must be received not more than 1 year after
9 the completion date of the project and the last of which must be received not more than 20 years after the
10 completion date.

11 (3) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the
12 interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full,
13 with other available funds in the revolving fund, including investment income, to enable the state to pay
14 the principal of and interest on the bonds issued pursuant to 75-5-1121.

15 (a) The interest rate must be determined as of the date the loan is authorized by the department
16 of natural resources and conservation.

17 (b) The rate may include any additional rate that the department of natural resources and
18 conservation considers reasonable or necessary to provide a reserve for the repayment of the loan. The
19 additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from
20 the rate established for any other loan.

21 (4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the
22 municipality or private concern, in a form prescribed or approved by the department of natural resources
23 and conservation, except that the bond, note, or other evidence must include provisions required by the
24 federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is
25 not required to be identical for all loans.

26 (5) As a condition to making a loan, the department of natural resources and conservation, with
27 the concurrence of the department, may impose a reasonable administrative fee that may be paid from the
28 proceeds of the loan or other available funds of the municipality or private concern. Administrative fees may
29 be deposited:

30 (a) in a special administrative costs account that the department of natural resources and

1 conservation may create for that purpose outside the revolving fund provided for in 75-5-1106; or

2 (b) in the administration account. Money deposited in the administration account established in
3 ~~75-6-211~~ 75-5-1106 must be used for the payment of administrative costs of the program. Money
4 deposited in the special administration costs account must be used for the payment of administrative costs
5 of the program unless not required for that purpose, in which case the money may be transferred to other
6 funds and accounts in the program."

7
8 **Section 268.** Section 75-6-205, MCA, is amended to read:

9 **"75-6-205. Rulemaking authority.** The board and the ~~board~~ department of natural resources and
10 conservation may adopt rules within their respective authorities established within the provisions of this
11 part, including rules:

12 (1) prescribing the form and content of applications for loans and grants;

13 (2) governing the application of the criteria for awarding loans and grants;

14 (3) establishing additional terms and conditions for the making of loans and the security
15 instruments and other necessary agreements;

16 (4) establishing ceilings on the amount of individual loans and grants to be made if considered
17 appropriate and necessary for the successful administration of the program;

18 (5) regarding other matters that may be required to ensure compliance of the program with the
19 provisions and the federal act and rules promulgated under the federal act, unless these matters are
20 specifically governed by this part; and

21 (6) to maintain the financial integrity of the program."

22
23 **Section 269.** Section 75-6-211, MCA, is amended to read:

24 **"75-6-211. Revolving fund.** (1) There is established in the state treasury a separate account
25 designated as the safe drinking water treatment revolving fund. The corpus of the fund must be available
26 in perpetuity for providing assistance under this part. There are established within the revolving fund a
27 federal allocation account, a state allocation account, an administration account, an investment income
28 account, and a debt service account.

29 (2) There must be credited to:

30 (a) the federal allocation account all amounts received by the state pursuant to the federal act as

capitalization grants for a state revolving fund to assist construction of or improvements to public water systems;

(b) the state allocation account the net proceeds of bonds of the state issued pursuant to 75-6-225 and other money appropriated by the legislature;

(c) the administration account 4% of the federal capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs;

(d) the investment account all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account the interest portion of loan repayments.

(3) Each loan made as authorized by ~~75-6-225~~ 75-6-224 must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-6-225 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds.

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund that it considers necessary to account for the program money and to ensure compliance with the federal act and this part."

Section 270. Section 75-10-707, MCA, is amended to read:

"75-10-707. Information gathering and access. (1) The department may undertake any investigative or other information-gathering action that it considers necessary or appropriate for determining the need for remedial action, choosing or taking a remedial action, or otherwise enforcing the provisions of this part.

(2) Any authorized officer, employee, or representative of the department may require a person who has or may have information relevant to a release or threatened release of a hazardous or deleterious substance to furnish, upon request, any information or documents relating to but not limited to the following matters:

1 (a) the identification, nature, and quantity of a hazardous or deleterious substance that has been
2 or is being generated, treated, stored, or disposed of at or transported from a facility;

3 (b) the nature or extent of a release or threatened release of a hazardous or deleterious substance
4 at or from a facility;

5 (c) information relating to the ability of a person to pay for or to perform a cleanup; and

6 (d) any other information relevant to the department's determination of the appropriate remedial
7 action to be taken or to the enforcement of this part.

8 (3) For purposes of assisting the department in acquiring information relevant to the need for, the
9 determination of, or the taking of remedial action or otherwise enforcing the provisions of this part, any
10 authorized officer, employee, or representative of the department is authorized to:

11 (a) enter or have access at reasonable times to any facility or other place or property where:

12 (i) a hazardous or deleterious substance may be or has been generated, stored, treated, disposed
13 of, or transported from;

14 (ii) there has been or may be a release of a hazardous or deleterious substance;

15 (iii) records or other relevant information regarding a release or threatened release is located;

16 (iv) entry is necessary to determine the need for any appropriate remedial action; or

17 (v) entry is necessary to effectuate a remedial action under this part; and

18 (b) inspect and obtain samples from the facility or other place or property referred to in subsection
19 (3)(a) or from any location where a suspected hazardous or deleterious substance may be located. Any
20 authorized officer, employee, or representative of the department is authorized to inspect and obtain
21 samples of containers or labeling for suspected hazardous or deleterious substances. Each ~~such~~ inspection
22 must be completed with reasonable promptness. If the authorized officer, employee, or representative
23 obtains samples, before leaving the premises ~~he~~ that person shall give to the owner, operator, tenant, or
24 other person in charge of the place from which the samples were obtained a receipt describing the sample
25 obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of ~~such~~
26 the samples must be furnished promptly to the owner, operator, tenant, or other person in charge if ~~such~~
27 that person can be located.

28 (4) The department may issue subpoenas for the attendance and testimony of witnesses and the
29 production of relevant papers, books, or documents relating to the matters in ~~75-10-707(2)(a)~~ subsections
30 (2)(a) through (2)(d). The method for service of subpoenas and payment of witness fees and mileage is the

1 same as that required in civil actions in the district courts of the state. In case of a refusal to obey a
2 subpoena issued and served upon a person pursuant to this subsection, the district court for a district in
3 which the person is found, resides, or transacts business, upon application of the department and after
4 notice to the person, has jurisdiction to issue an order requiring the person to appear and either give
5 testimony or produce documents, or both, before a hearings officer. A failure to obey the order of the court
6 may be punished by the court as a contempt.

7 (5) If consent is not granted regarding a request made by an authorized officer, employee, or
8 representative under this section, the director of the department may issue an order directing compliance
9 with the request.

10 (6) The department may commence a civil action to compel compliance with an order issued
11 pursuant to this section.

12 (7) In any action commenced pursuant to subsection (6) when the court determines that there may
13 be an imminent and substantial threat to public health, safety, or welfare or the environment, the court shall
14 enjoin any activity that constitutes a failure to comply with the order and shall direct compliance with the
15 order unless, under the circumstances of the case, the order is arbitrary and capricious or otherwise not
16 in accordance with law.

17 (8) Persons subject to the requirements of this section may make a written claim of confidentiality
18 for information unique to the owner or operator of a facility that would, if disclosed, reveal methods or
19 processes entitled to protection as trade secrets. The claim of confidentiality must be clearly designated
20 on the materials at the time they are obtained by the department. If the department accepts the
21 characterization, it shall maintain that information as confidential. Information describing physical or
22 chemical characteristics of hazardous or deleterious substances that have been or may be released into the
23 environment are not considered confidential. The department has access to and may use any trade secret
24 information in carrying out the activities of this part as may be necessary to protect the public health,
25 safety, or welfare or the environment while maintaining the information as confidential."

26
27 **Section 271.** Section 75-10-806, MCA, is amended to read:

28 **"75-10-806. State government procurement of recycled supplies and materials.** (1) The
29 department of administration shall write purchasing specifications that incorporate requirements for the
30 purchase of materials and supplies made from recycled materials if the use is technologically practical and

1 reasonably cost-effective. ~~By January 1, 1992, these~~ These requirements must be incorporated into the
2 purchase of:

- 3 (a) paper and paper products;
- 4 (b) plastic and plastic products;
- 5 (c) glass and glass products;
- 6 (d) automobile and truck tires;
- 7 (e) motor oil and lubricants; and
- 8 (f) other materials and supplies as determined by the department of administration.

9 (2) It is the goal of the state that ~~by January 1, 1996,~~ 95% of the paper and paper products used
10 by state agencies, universities, and the legislature must be made from recycled material that maximizes
11 postconsumer material content.

12 (3) ~~Prior to January 1, 1996, the~~ The state shall, to the maximum extent possible, purchase for
13 use by state agencies paper and paper products that contain postconsumer material rather than new
14 material.

15 (4) To the extent practical, guidelines for the recycled material content of paper should be
16 consistent with nationwide standards for recycled paper.

17 (5) The department and the department of administration shall establish a joint recycling market
18 development task force. Task force membership must include but is not limited to representatives of the
19 recycling industry, wholesalers, state agencies, and citizen and environmental organizations, as well as
20 other interested persons. The task force shall:

21 (a) assist the department of administration in developing purchasing specifications as required in
22 subsection (1);

23 (b) develop additional mechanisms for state government to develop markets for recycled materials;

24 (c) identify procurement barriers that discriminate against the purchase of supplies and products
25 that contain recycled material; and

26 (d) develop recommendations for an informational program designed to educate state employees
27 on how to reduce waste and recycle in the workplace."

28
29 **Section 272.** Section 75-11-313, MCA, is amended to read:

30 **"75-11-313. Petroleum tank release cleanup fund.** (1) There is a petroleum tank release cleanup

fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections (3)(b) and (3)(c). Administrative costs under subsection (3)(a) must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature; and

(d) all interest earned on money in the fund.

(3) The fund may be used only:

(a) to administer this part, including payment of board and department expenses associated with administration;

(b) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and

(c) for repayment of any advance made under subsection (4), plus interest earned on the advance.

~~(4) (a) The legislature may appropriate to the fund repayable advances as necessary to carry out the purposes of this part. The outstanding total of repayable advances may not exceed the amount the board estimates will be received by the fund from the petroleum storage tank cleanup fee during the next 24 months.~~

~~(b) Advances to the fund must be repaid and interest earned on advances must be paid to the general fund when determined appropriate by the board. However, all advances to the fund plus the interest earned must be repaid on or before December 31, 1995."~~

Section 273. Section 75-20-304, MCA, is amended to read:

"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501,

1 and this part.

2 (2) The board may waive compliance with any of the provisions of this chapter upon receipt of
3 notice by a person subject to this chapter that a facility or associated facility has been damaged or
4 destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other
5 civil disorder and there exists an immediate need for construction of a new facility or associated facility or
6 the relocation of a previously existing facility or associated facility in order to promote the public welfare.

7 (3) The board shall waive compliance with the requirements of 75-20-301(2)(c), (3)(b), and (3)(c)
8 and the requirements of 75-20-211(1)(a)(iv) and (1)(a)(v), and 75-20-216(3), ~~and 75-20-303(3)(a)(iv)~~
9 relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the
10 board at a public hearing that:

11 (a) a proposed facility will be constructed in a county where a single employer within the county
12 has permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2
13 years at the employer's operations within the preceding 10-year period;

14 (b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be
15 located support by resolution such a waiver;

16 (c) the proposed facility will be constructed within a 15-mile radius of the operations that have
17 ceased or been curtailed; and

18 (d) the proposed facility will have a beneficial effect on the economy of the county in which the
19 facility is proposed to be located.

20 (4) The waiver provided for in subsection (3) applies only to permanent job losses by a single
21 employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal
22 nature, including but not limited to construction jobs or job losses during labor disputes.

23 (5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or
24 minimum adverse environmental impact for a facility defined in 75-20-104(8)(b), (8)(c), (8)(d), or (8)(e), for
25 an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in
26 75-20-104(8)(a) to the extent that the process or portion of the facility is not subject to an air or water
27 quality permit issued by the department or board.

28 (6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver
29 request under subsection (3). However, any payments made under this subsection must be credited toward
30 the fee paid under 75-20-215 to the extent that the data or evidence presented at the hearing or the

1 decision of the board under subsection (3) can be used in making a certification decision under this chapter.

2 (7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss
3 of jobs as defined in subsection (3)(a)."
4

5 **Section 274.** Section 76-2-202, MCA, is amended to read:

6 **"76-2-202. Establishment of zoning districts -- regulations.** (1) (a) Within the unincorporated
7 portions of a jurisdictional area ~~which~~ that has been established under provisions of 76-1-501 through
8 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish
9 zoning districts and zoning regulations for all or part of the jurisdictional area.

10 (b) An action challenging the creation of a zoning district must be commenced ~~by October 1, 1994,~~
11 ~~or~~ within 5 years after the date of the order by the board of county commissioners creating the district, ~~if~~
12 ~~the district was created after October 1, 1989.~~

13 (2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct,
14 alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

15 (3) In a proceeding for a permit or variance to place manufactured housing within a residential
16 zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely
17 affect property values of conventional housing.

18 (4) Within each district the height and bulk of future buildings and the area of the yards, courts,
19 and other open spaces and the future uses of the land or buildings must be limited and future building
20 setback lines must be established.

21 (5) All regulations must be uniform for each class or kind of buildings throughout a district, but the
22 regulations in one district may differ from those in other districts.

23 (6) As used in this section, "manufactured housing" means a single-family dwelling, built offsite
24 in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square
25 feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local
26 regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the
27 United States department of housing and urban development at the time of its production. A manufactured
28 home does not include a mobile home, ~~as defined in 61-4-309,~~ or a housetrailer, as defined in 61-1-501.

29 (7) Nothing contained in this section may be construed to limit conditions imposed in historic
30 districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant

1 to Title 70, chapter 17, part 2."

2
3 **Section 275.** Section 76-2-222, MCA, is amended to read:

4 **"76-2-222. Membership and term of board members -- vacancies.** (1) ~~Except as provided in~~
5 ~~subsection (3), the~~ The board of adjustment shall consist consists of five members, each to be appointed
6 for a term of 2 years and removable for cause by the board of county commissioners upon written charges
7 and after public hearing. The board of county commissioners may designate the same persons to act as
8 members of the board of adjustment for unincorporated portions of the jurisdictional area as may be
9 appointed by the municipality within the jurisdictional area under provisions of 76-2-321 through 76-2-328.

10 (2) Vacancies ~~shall~~ must be filled for the unexpired term of any member whose term becomes
11 vacant.

12 ~~(3) Within 30 days after January 1, 1988, the board of county commissioners shall designate two~~
13 ~~members of the board of adjustment whose terms must end in 1988 and three members whose terms must~~
14 ~~end in 1989. Subsequent appointments must be made for a term of 2 years."~~

15
16 **Section 276.** Section 76-2-302, MCA, is amended to read:

17 **"76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or
18 other legislative body may divide the municipality into districts of the number, shape, and area as are
19 considered best suited to carry out the purposes of this part. Within the districts, it may regulate and
20 restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

21 (2) All regulations must be uniform for each class or kind of buildings throughout each district, but
22 the regulations in one district may differ from those in other districts.

23 (3) In a proceeding for a permit or variance to place manufactured housing within a residential
24 zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely
25 affect property values of conventional housing.

26 (4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite
27 in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square
28 feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local
29 regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the
30 United States department of housing and urban development at the time of its production. A manufactured

1 home does not include a mobile home, ~~as defined in 61-4-309,~~ or a housetrailer, as defined in 61-1-501.
2 (5) ~~Nothing contained in this~~ This section may not be construed to limit conditions imposed in
3 historic districts, local design review standards, existing covenants, or the ability to enter into covenants
4 pursuant to Title 70, chapter 17, part 2."
5

6 **Section 277.** Section 76-3-305, MCA, is amended to read:

7 **"76-3-305. Vacation of plats -- utility easements.** (1) Any plat prepared and recorded as provided
8 in this ~~section~~ part may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502,
9 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115. Upon vacation, the governing
10 body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the
11 streets and alleys of the vacated portions must revert. The governing body or the district court, as provided
12 in 7-5-2502, shall take into consideration the previous platting; the manner in which the right-of-way was
13 originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the
14 parties requesting the vacation; and any agreements between the adjacent property owners regarding the
15 use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or
16 more of the owners of the properties within the platted area adjacent to the vacated portions.

17 (2) However, when any poleline, pipeline, or any other public or private facility is located in a
18 vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of
19 the public or private utility facility has an easement over the vacated land to continue the operation and
20 maintenance of the public utility facility."
21

22 **Section 278.** Section 76-3-511, MCA, is amended to read:

23 **"76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) ~~After April~~
24 ~~14, 1996, except~~ Except as provided in subsections (2) through (4) or unless required by state law, a
25 governing body may not adopt a rule under 76-3-501 or 76-3-504~~(5)(a)~~(6)(c) that is more stringent than
26 the comparable state regulations or guidelines that address the same circumstances. The governing body
27 may incorporate by reference comparable state regulations or guidelines.

28 (2) The governing body may adopt a rule to implement 76-3-501 or 76-3-504~~(5)(a)~~(6)(c) that is
29 more stringent than comparable state regulations or guidelines only if the governing body makes a written
30 finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the rule. If the governing body determines that the rule is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a rule review under subsection (4)(a) if the governing body adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body rule."

Section 279. Section 76-6-105, MCA, is amended to read:

"76-6-105. Construction of chapter. (1) ~~Insofar as~~ To the extent that the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter ~~shall be~~ are controlling. The powers conferred by this chapter ~~shall be~~ are in addition and supplemental to the powers conferred by any other law.

(2) This ~~subsection shall~~ chapter may not be construed to imply that any easement, covenant, condition, or restriction ~~which that~~ does not have the benefit of this chapter ~~shall on account of~~ is not enforceable based on any provisions ~~hereof be unenforceable of this chapter. Nothing in this~~ This chapter ~~shall~~ does not diminish the powers granted by any general or special law to acquire by purchase, gift,

1 eminent domain, or otherwise and to use land for public purposes."

2
3 **Section 280.** Section 76-14-113, MCA, is amended to read:

4 **"76-14-113. Eligibility for loans.** (1) Any person may apply for a loan to finance rangeland
5 improvements to be constructed, developed, and operated in Montana who:

6 (a) is a resident of Montana;

7 (b) is engaged in farming or ranching; and

8 (c) possesses the necessary expertise to make a rangeland loan practical.

9 (2) All loans must be for rangeland improvement or development exclusively.

10 (3) An application for a loan must be in the form prescribed by the department and accompanied
11 by a resource conservation plan, which may be prepared in consultation with the United States ~~soil~~ natural
12 resources conservation service."

13
14 **Section 281.** Section 76-15-541, MCA, is amended to read:

15 **"76-15-541. Conservation practice loan program -- definition.** (1) A conservation district may
16 establish and administer a conservation practice loan program pursuant to 76-15-541 through 76-15-547.

17 (2) A conservation practice loan may be made to a land occupier who is an agriculture producer
18 within the exterior boundaries of the district. The conservation practice must be constructed, operated,
19 developed, and maintained within the district.

20 (3) A conservation practice is the construction, operation, development, or maintenance of an
21 erosion control and prevention operation, a work of improvement for flood prevention, and the
22 conservation, development, use, and disposal of water within a district in furtherance of the purposes and
23 policies of this chapter. Conservation practices include those practices pertaining to acceptable land use
24 conversion as determined by a majority of the district supervisors with the advice of the United States ~~soil~~
25 natural resources conservation service."

26
27 **Section 282.** Section 76-15-543, MCA, is amended to read:

28 **"76-15-543. Application for loan.** (1) An application for a loan must be in the form prescribed by
29 the district supervisors and contain or be accompanied by any information necessary to adequately describe
30 the proposed conservation practice and necessary for evaluation of the proposed conservation practice

1 under the criteria contained in 76-15-544 and 76-15-545.

2 (2) The application must include a conservation plan, which may be prepared in consultation with
3 the United States ~~sell~~ natural resources conservation service."

4
5 **Section 283.** Section 76-15-546, MCA, is amended to read:

6 **"76-15-546. Terms and conditions of loan.** A conservation practice loan is subject to the following
7 terms and conditions:

8 (1) The district shall obtain ~~such~~ a security interest in real estate as would be obtained by a
9 reasonable, careful, and prudent lender.

10 (2) The term of the loan may not be greater than the life of the project, and in no case may it
11 exceed 30 years.

12 (3) A current appraisal of real estate offered as security and a commitment for title insurance on
13 that land must be secured by the borrower at ~~his~~ the borrower's expense. All costs incident to the loan and
14 loan closing, other than administrative costs of the district, must be paid by the borrower.

15 (4) A conservation practice must be completed according to United States ~~sell~~ natural resources
16 conservation service standards and specifications, if applicable."

17
18 **Section 284.** Section 77-1-804, MCA, is amended to read:

19 **"77-1-804. Rules for recreational use of state lands -- penalty.** (1) The board shall adopt rules
20 authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use
21 local offices of the department to administer this program whenever practical.

22 (2) Rules adopted under this section must address the circumstances under which the board may
23 close legally accessible state lands to recreational use. ~~Such action~~ Action by the board may be taken upon
24 its own initiative or upon petition by an individual, organization, corporation, or governmental agency.
25 Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed
26 by the board only after public notice and opportunity for public hearing in the area of the proposed closure,
27 except when the department is acting under rules adopted by the board for an emergency closure. Closed
28 lands must be posted by the lessee at customary access points, with signs provided or authorized by the
29 department.

30 (3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use

1 or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state
2 lands due to:

- 3 (a) cabin site and homesite leases and licenses;
- 4 (b) the seasonal presence of growing crops; and
- 5 (c) active military, commercial, or mineral leases.

6 (4) The board shall adopt rules that provide an opportunity for any individual, organization, or
7 governmental agency to petition the board for purposes of excluding a specified portion of state land from
8 a categorical closure that has been imposed under subsection (3).

9 (5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain
10 reasons, including but not limited to:

- 11 (a) damage attributable to recreational use that diminishes the income-generating potential of the
12 state lands;
- 13 (b) damage to surface improvements of the lessee;
- 14 (c) the presence of threatened, endangered, or sensitive species or plant communities;
- 15 (d) the presence of unique or special natural or cultural features;
- 16 (e) wildlife protection;
- 17 (f) noxious weed control; or
- 18 (g) the presence of buildings, structures, and facilities.

19 (6) Rules adopted under this section may impose restrictions upon general recreational activities,
20 including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with
21 the presence of livestock. The board may also by rule restrict access on state lands in accordance with a
22 block management program administered by the department of fish, wildlife, and parks. Motorized vehicle
23 use by recreationists on state lands is restricted to federal, state, and dedicated county roads and to those
24 roads designated by the department to be open to motorized vehicle use.

25 (7) The board shall adopt rules providing for the issuance of a recreational special use license.
26 Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless
27 it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring
28 a recreational special use license for recreational use that is not commercial, concentrated, or within the
29 definition of general recreational use.

30 (8) For a violation of rules adopted by the board pursuant to this section, the department may

1 assess a civil penalty of up to \$1,000 for each day of violation. The board shall adopt rules providing for
2 notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected
3 under this subsection must be deposited as provided in 87-1-601~~(6)~~(7)."

4
5 **Section 285.** Section 77-2-402, MCA, is amended to read:

6 **"77-2-402. Hearing requirements.** Any hearing required under 77-2-401 must be held in a county
7 in which the land involved in the proposed sale or transfer is located and must be held according to
8 procedural rules ~~which shall~~ that must be adopted by the ~~commissioner~~ director of the department in
9 accordance with the Montana Administrative Procedure Act."

10
11 **Section 286.** Section 77-2-403, MCA, is amended to read:

12 **"77-2-403. Action by ~~commissioner~~ director.** The ~~commissioner~~ director of the department shall
13 take ~~such~~ action ~~as he may consider~~ that the director considers appropriate, consistent with federal
14 jurisdiction, to address concerns and issues raised during the hearing. ~~Such~~ The action may include but is
15 not limited to:

16 (1) the filing of formal requests for action by the appropriate federal agency that would alleviate
17 concerns expressed at the hearing;

18 (2) the filing of a formal protest to the proposed sale or transfer."

19
20 **Section 287.** Section 77-3-444, MCA, is amended to read:

21 **"77-3-444. Limitation on overriding royalties and payments out of production.** (1) ~~No~~ A person,
22 partnership, or association may not enter into an agreement ~~which~~ that in the aggregate creates overriding
23 royalties or payments out of the production of oil and gas in excess of 5% above the landowner's royalty
24 payable to the state of Montana unless that agreement expressly provides that the obligation to pay
25 overriding royalties or payments out of production may be suspended by the ~~commissioner~~ director of the
26 department at any time upon a determination that the excess overriding royalties or payments out of
27 production constitute a burden on lease operations to the extent that:

28 (a) proper and timely development may be retarded;

29 (b) continued operation of the lease may be impaired; or

30 (c) premature abandonment of the wells may occur.

(2) This section applies separately to any zone or portion of a lease segregated for computing a royalty due to the state of Montana.

(3) All agreements of any kind creating overriding royalties or payments out of production of oil and gas must be filed with the department within 30 days of their creation by the lessee."

Section 288. Section 77-6-202, MCA, is amended to read:

"77-6-202. Lease by competitive bidding -- full market value required. When the department receives an application to lease an unleased tract, it shall advertise for bids on the tract. The tract must be leased to the highest bidder unless the board determines that the bid is not in the state's best interest for the reasons set forth in 77-6-205(2). The board may not accept a bid that is below full market value ~~determined by taking into account recommendations of the state land board advisory council.~~ If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease may be issued, at a rental rate to be determined by the board, to the first bidder who is willing to pay the ~~board determined rental~~ board-determined rate whose name is selected through a random selection process from all bidders on the tract."

Section 289. Section 80-7-123, MCA, is amended to read:

"80-7-123. Nursery account -- investment of funds. (1) There is an account in the state special revenue fund. All inspection and license fee revenue authorized under ~~80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-121, 80-7-122, 80-7-135,~~ and this section must be deposited in this account.

(2) Revenue received under ~~80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-121, 80-7-122, 80-7-135,~~ and this section not immediately required for the purpose of 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-121, 80-7-122, 80-7-135, and this section must be invested in accordance with the unified investment program established in Title 17, chapter 6, part 2. Income from the investments must be deposited in the account."

Section 290. Section 80-8-111, MCA, is amended to read:

"80-8-111. (Temporary) Waste pesticide and pesticide container collection, disposal, and recycling program. (1) The department shall establish a waste pesticide and pesticide container collection, disposal, and recycling program. The program must be funded by license, permit, and special fees designated for that

1 purpose in this chapter. The department may also establish waste pesticide and pesticide container fees
2 and accept grants, gifts, and other funds to finance this program.

3 (2) The department may cooperate and contract with a person to conduct and manage the waste
4 pesticide and pesticide container collection, disposal, and recycling program.

5 (3) (a) The department shall establish a collection program for waste pesticides and pesticide
6 containers. In order to participate in this program, a person shall:

7 (i) notify the department in advance of the type and amount of waste pesticide or pesticide
8 containers that will be delivered for collection; and

9 (ii) deliver the waste pesticide or pesticide containers for collection by the department at a time and
10 location designated by the department.

11 (b) A person may not be subject to an administrative or judicial penalty or action under this chapter
12 as a result of participation in the waste pesticide or pesticide container collection, disposal, and recycling
13 program pursuant to this section.

14 (4) The department may designate types of waste pesticides or pesticide containers that it will not
15 collect for disposal and recycling under this program.

16 (5) The department shall provide pesticide applicators, dealers, and operators who participate in
17 the waste pesticide and pesticide container collection, disposal, and recycling program and who are subject
18 to a license or permit fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213 with a credit
19 against the fees levied pursuant to 80-8-105(2)(s), provided that:

20 (a) the credit does not exceed the amount of the license or permit fee paid by the applicator,
21 dealer, or operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213; and

22 (b) each applicator, dealer, or operator may receive only one credit for each permit or license
23 period.

24 (6) The department shall consult affected local governments before implementing the collection
25 program under this section. (Terminates June 30, 1999--sec. 14, Ch. 465, L. 1993.)

26 **80-8-111. (Effective July 1, 1999) Voluntary waste pesticide reporting system -- proposed**
27 **program -- pesticide information.** (1) The department shall establish a voluntary reporting system to
28 encourage pesticide applicators and other persons to report:

29 (a) the types and volume of waste pesticides in their possession; and

30 (b) the county where the waste pesticides are stored.

(2) The department shall inventory the waste pesticide information reported under subsection (1) and develop a proposed waste pesticide disposal program for consideration by the legislature ~~in 1993~~.

(3) All waste pesticide information reported to the department under subsection (1) is confidential. The department may summarize the information for purposes of preparing a waste pesticide inventory report that is public information. If a waste pesticide disposal program is not approved by the legislature ~~in 1993~~, the department shall destroy the waste pesticide information received under subsection (1)."

Section 291. Section 81-22-101, MCA, is amended to read:

"81-22-101. Definitions. For the purpose of this chapter, the following definitions are adopted:

(1) "Agent" means a person who is authorized by another person to act for that other person in dealing with a third person.

(2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass that also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added coloring matter.

~~(4) "Cheese factory" means a place where cheese, including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing, and low-fat counterparts of cheese, either cultured or directly acidified, is made for commercial purposes.~~

~~(5)~~ (4) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

~~(6)~~ (5) "Code of Federal Regulations" refers especially but is not limited to Title 21, which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health and human services.

~~(7)~~ (6) "Cream" means the milk fat that rises to the surface when milk is allowed to stand or that is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

~~(8)~~(7) "Creamery" means a place where butter is made for commercial purposes.

~~(9)~~(8) "Culture" means the harmless lactic acid fermenting bacteria that are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and similar products.

~~(10)~~(9) "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

~~(11)~~(10) The term "department", unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

~~(12)~~(11) "~~Direct acidification~~", "~~directly~~ Directly acidified", and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

~~(13)~~(12) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

~~(14)~~(13) "French ice cream", "French custard ice cream", "~~cooked ice cream~~", "~~ice custard~~", "~~parfaits~~", and similar frozen products, except sherbets and water ices, are varieties of ice cream.

~~(15) "Frozen dessert plant" means a place where products named in subsections (27)(a)(iii) through (27)(a)(ix) are made for commercial purposes.~~

~~(16) "Fruit ice cream" must conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than 9% of milk fat.~~

~~(17)~~(14) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

~~(18) "Ice" or "ice sherbet" is the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring or added stabilizer composed of wholesome edible material, and must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid. It may not contain milk solids.~~

~~(19)~~(15) "Ice cream" is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. A frozen milk or milk product may not be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

~~(20) An "ice cream factory" is a place where ice cream mix is frozen into ice cream for commercial purposes.~~

~~(21)~~(16) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under ~~subsection (27)(a)(iii) through (27)(a)(v) and (27)(a)(vii) through (27)(a)(xii)~~ subsections (21)(a)(iii) through (21)(a)(xii) are made.

~~(22) An "ice cream mix factory" is a place where ice cream mix is made.~~

~~(23)~~(17) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

~~(24)~~(18) "Manufactured dairy product" means an item enumerated in subsection ~~(27)~~ (21) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, "manufactured dairy product" includes but is not limited to:

(a) ice cream or its mix;

(b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;

(c) sherbets of all kinds or their mixes;

(d) animal or vegetable fat frozen desserts or their mixes;

(e) frozen confections or their mixes when made in a manufactured dairy products plant;

(f) water ices or their mixes;

(g) frozen dessert sandwiches, bars, cones, and similar novelties;

(h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;

(i) ice milk or its mix;

(j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;

(k) sour cream when cultured or directly acidified;

(l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;

(m) buttermilk, cultured or from churned butter or directly acidified;

(n) butter;

(o) yogurt, low-fat yogurt, or flavored yogurt, either cultured or directly acidified or frozen.

~~(26)~~(19) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or that manufactures those products listed in subsection ~~(27)~~ (21). If only products of semblance or imitation of dairy products are made, the plant is not considered a manufactured dairy products plant.

~~(26)~~(20) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis-free by the United States department of agriculture or in the process of being accredited, when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

~~(27)~~(21) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

(i) butter;

(ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, which are either cultured or directly acidified, and cheese dressings;

(iii) ice cream or its mix;

(iv) frozen dessert or its mix;

(v) sherbets of all kinds or their mixes;

(vi) frozen ice cream bars, sandwiches, cones, and similar novelties;

(vii) frozen desserts or products made in the semblance or imitation of frozen dessert;

1 (viii) frozen confections or their mixes;

2 (ix) water ices or their mixes;

3 (x) ice milk or its mix;

4 (xi) French ice cream, French custard, or their mixes;

5 (xii) frozen custard or its mix and frozen yogurt;

6 (xiii) yogurt, flavored yogurt, and low-fat yogurt;

7 (xiv) sour cream, either cultured or directly acidified;

8 (xv) cream cheese, either cultured or directly acidified;

9 (xvi) buttermilk, either cultured, from churned butter, or directly acidified;

10 (xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar
11 flavored products;

12 (xviii) dry or powdered milk; and

13 (xix) condensed milk products.

14 (b) The items specified in subsection ~~(27)(a)~~ (21)(a) must conform to the standards of identity set
15 forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the
16 standards adopted by the department prevail. The labeling of manufactured dairy products must be in
17 accordance with the Montana Food, Drug, and Cosmetic Act.

18 ~~(28)(22)~~ "Milk or cream station" means a place other than a creamery where deliveries of milk or
19 cream are weighed, graded, sampled, tested, or collected for purchase.

20 ~~(29) "Milk sherbet" is the pure, clean, frozen product made from milk product, water, and sugar,~~
21 ~~with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not~~
22 ~~less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid,~~
23 ~~and with or without added stabilizer composed of wholesome edible material. It must contain not less than~~
24 ~~4% by weight of solids.~~

25 ~~(30)(23)~~ "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure",
26 "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged",
27 and similar terms, when applied to a manufactured dairy product or product made in semblance or in
28 imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.

29 ~~(31)(24)~~ "Official test" means test procedures outlined in the sources referred to under 81-22-301
30 concerning samples, methods, and rules of evidence.

1 ~~(32)~~(25) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every
2 particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this
3 temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this
4 temperature for at least 15 seconds in equipment that is properly operated and approved by the
5 department. Milk products that have a higher fat content than milk or contain added sweeteners must be
6 heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes,
7 or to at least 175 degrees F and held continuously at or above this temperature for at least 25 seconds.
8 This definition does not bar any other pasteurization process that has been recognized by the United States
9 public health service to be equally effective and that is approved by the department.

10 ~~(33)~~(26) "Person" means an individual, firm, partnership, corporation, cooperative, or other business
11 unit or trade device.

12 ~~(34)~~(27) "Producer" means the person who exercises control over the production of milk or cream
13 delivered to a milk or cream receiving station or manufactured dairy products plant or who receives
14 payment for milk or cream used in manufacturing.

15 ~~(35) "Raw milk" or "raw milk products" means milk or milk products that have not been treated by~~
16 ~~a process of pasteurization.~~

17 ~~(36) "Renovated butter" or "processed butter" is the product made by melting and reworking,~~
18 ~~without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain~~
19 ~~not less than 80% of milk fat.~~

20 ~~(37)~~(28) "Safe temperature" means 45 degrees F or less unless the product is frozen, in which case
21 the temperature must be at or below 0 degrees F.

22 ~~(38) "Skimmed milk cheese" is the sound, solid, and ripened product made from skim milk by~~
23 ~~coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning.~~

24 ~~(39)~~(29) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or
25 manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine
26 their quality, wholesomeness, or composition.

27 ~~(40)~~(30) "Water ice" means a frozen product containing but not limited to the following ingredients:
28 water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal
29 Regulations as optional ingredients."

1 **Section 292.** Section 82-4-232, MCA, is amended to read:

2 **"82-4-232. Area mining required -- bond -- alternative plan.** (1) Area strip mining, a method of
3 operation ~~which~~ that does not produce a bench or fill bench, is required where strip mining is proposed.
4 All highwalls must be reduced and the steepest slope of the reduced highwall ~~shall~~ may be no greater than
5 20 degrees from the horizontal. Highwall reduction ~~shall~~ must be commenced at or beyond the top of the
6 highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading ~~shall~~ must eliminate all
7 highwalls and spoil peaks. The area of land affected ~~shall~~ must be restored to the approximate original
8 contour of the land. When directed by the department, the operator shall construct in the final grading ~~such~~
9 diversion ditches, depressions, or terraces ~~as~~ that will accumulate or control the water runoff. Additional
10 restoration work may be required by the department according to rules adopted by the board.

11 (2) In addition to the backfilling and grading requirements, the operator's method of operation on
12 steep slopes may be regulated and controlled according to rules adopted by the board. These rules may
13 require any measure ~~whatsoever~~ to accomplish the purpose of this part.

14 (3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil
15 removal, storage, replacement, and reconstruction, and the operator ~~shall~~ must as a minimum be required
16 to:

17 (a) segregate the A horizon of the natural soil, except where it can be shown that other available
18 soil materials will create a final soil having a greater productive capacity; and if not ~~utilized~~ used
19 immediately, stockpile this material separately from other spoil and provide needed protection from wind
20 and water erosion or contamination by other acid or toxic material;

21 (b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a
22 combination of such horizons or other strata that are shown to be both texturally and chemically suitable
23 for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon
24 in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to
25 that which existed in the natural soil; and if not ~~utilized~~ used immediately, stockpile this material separately
26 from other spoil and provide needed protection from wind and water erosion or contamination by acid or
27 toxic material;

28 (c) replace and regrade the root zone material described in subsection (3)(b) with proper
29 compaction and uniform depth over the regraded spoil material; and

30 (d) redistribute and grade in a uniform manner the surface soil horizon described in subsection

1 (3)(a).

2 (4) All available topsoil ~~shall~~ must be removed in a separate layer, guarded from erosion and
3 pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it
4 sustained prior to removal, provided that the operator shall accord substantially the same treatment to any
5 subsurface deposit of material that is capable, as determined by the department, of supporting surface
6 vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the
7 topsoil or the best available subsurface deposit of material ~~which~~ that is best able to support vegetation
8 ~~shall~~ must be returned as the top layer.

9 (5) As determined by rules of the board, time limits ~~shall~~ must be established requiring backfilling,
10 grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation
11 to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling ~~shall~~ must be
12 completed before necessary equipment is moved from the operation.

13 (6) (a) The permittee may file a request with the department for the release of all or part of a
14 performance bond or deposit. Within 30 days after any application for bond or deposit release has been
15 filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once
16 a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or
17 mining operation. The notice is considered part of any bond release application and must contain a
18 notification of the precise location of the land affected, the number of acres, the permit and the date
19 approved, the amount of the bond filed and the portion sought to be released, the type and appropriate
20 dates of reclamation work performed, and a description of the results achieved as they relate to the
21 permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee
22 shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental
23 bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality
24 of the operation, notifying them of the permittee's intention to seek release from the bond.

25 (b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the
26 department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved.
27 In the evaluation, the department shall consider, among other things, the degree of difficulty in completing
28 any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability
29 of continuance or future occurrence of ~~such~~ the pollution, and the estimated cost of abating ~~such~~ the
30 pollution. The department shall notify the permittee in writing of its decision to release or not to release all

1 or part of the performance bond within 60 days of the filing of the request if no public hearing is held
2 pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days
3 ~~thereafter~~ after the hearing.

4 (c) The department may release the bond or deposit in whole or in part if it is satisfied the
5 reclamation covered by the bond or deposit or portion ~~thereof~~ of the bond or deposit has been
6 accomplished as required by this part according to the following schedule:

7 (i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a
8 bonded area in accordance with the approved reclamation plan, the department shall release 60% of the
9 bond or collateral for the applicable permit area.

10 (ii) After revegetation has been established on the regraded lands in accordance with the approved
11 reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing
12 revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party
13 to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent
14 impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound
15 future maintenance by the operator or the landowner have been made with the department. No part of the
16 bond or deposit may be released under this subsection (6)(c)(ii):

17 (A) as long as the lands to which the release would be applicable are contributing suspended solids
18 to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

19 (B) before soil productivity for prime farm lands to which the release would be applicable has
20 returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under
21 equivalent management practices, as determined from the soil survey.

22 (iii) When the permittee has successfully completed all prospecting, mining, and reclamation
23 activities, the department shall release the remaining portion of the bond, but not before the expiration of
24 the period specified for responsibility and not until all reclamation requirements of this part are fully met.

25 (d) If the department disapproves the application for release of the bond or a portion thereof of the
26 bond, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending
27 corrective actions necessary to secure the release and allowing opportunity for a public hearing.

28 (e) When an application for total or partial bond release is filed with the department, it shall notify
29 the municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior
30 to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency ~~which~~ that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to ~~such~~ the operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication of the notice provided for in subsection (6)(a). If written objections are filed and a hearing is requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for ~~such~~ the hearing, hold a public hearing in the locality of the operation proposed for bond release. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for ~~such~~ the hearing.

(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve ~~such~~ written objections.

(h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) An operator may propose alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans ~~shall~~ must be submitted to the department, and after consultation with the landowner, if the plans are approved by the department and complied with within the time limits ~~as may~~ be determined by the department as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the department. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222~~(1)(k)~~ (1)(l).

(8) If alternate revegetation is proposed, a management plan must be submitted showing how the

1 area will be ~~utilized~~ used and any data necessary to show that the alternate postmining land use can be
2 achieved. Any plan must require the operation ~~as~~ at a minimum to:

3 (a) restore the land affected to a condition capable of supporting the use ~~which~~ that it was capable
4 of supporting prior to any mining operation or to a higher or better use of which there is a reasonable
5 likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution,
6 and if the permit applicant's proposed land use following reclamation is not ~~deemed~~ determined to be
7 impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve
8 unreasonable delay in implementation, and would not violate federal, state, or local law; and

9 (b) prevent soil erosion to the extent achieved prior to mining."
10

11 **Section 293.** Section 82-4-253, MCA, is amended to read:

12 **"82-4-253. Suit for damage to water supply.** (1) An owner of an interest in real property who
13 obtains all or part of ~~his~~ a supply of water for domestic, agricultural, industrial, or other legitimate use from
14 an underground source other than a subterranean stream having a permanent, distinct, and known channel
15 may sue an operator to recover damages for contamination, diminution, or interruption of the water supply,
16 proximately resulting from strip mining or underground mining.

17 (2) Prima facie evidence of injury in a suit under this ~~subsection~~ section is established by the
18 removal of coal or disruption of overlying aquifer from designated ground water areas as prescribed in Title
19 85, chapter 2, part 5. If the area is not a designated ground water area, a showing that the coal or
20 overlying strata is an aquifer in that geographical location and that the coal or the overlying strata has been
21 removed or disrupted shifts the burden to the defendant (operator) to show that the plaintiff's (owner's)
22 water supply was not injured thereby.

23 (3) An owner of water rights adversely affected may file a complaint detailing the loss of ~~his~~ water
24 in quality and quantity with the department. Upon receipt of this complaint the department shall:

25 (a) investigate the complaint using all available information including monitoring data gathered at
26 the mine site;

27 (b) require the defendant (operator) to install ~~such~~ monitoring wells or other practices that may be
28 needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;

29 (c) issue within 90 days a written finding specifying the cause of the water loss, if there is a loss,
30 in terms of quantity or quality;

(d) order the mining operator in compliance with chapter 2 of Title 85 to replace the water immediately on a temporary basis to provide the needed water and within a reasonable time, replace the water in like quality, quantity, and duration, if the loss is caused by the surface coal mining operation; and

(e) order the suspension of the operator's permit for failure to replace the water, until such time as the operator provides substitute water.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining or underground mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining or underground mining on the dominant tract.

(5) This section and 82-4-252 do not create, modify, or affect any right, liability, or remedy other than as expressly provided."

Section 294. Section 82-4-254, MCA, is amended to read:

"82-4-254. Violation -- penalty -- waiver. (1) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than \$100 or more than \$5,000 for the violation and an additional civil penalty of not less than \$100 or more than \$5,000 for each day during which a violation continues and may be enjoined from continuing ~~such the~~ violations as ~~hereinafter~~ provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board, or order of the department shall be assessed a penalty of not less than \$750 for each day, up to 30 days, during which ~~such the~~ failure or violation continues. The period permitted for correction of a violation ~~shall does~~ not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after ~~such the~~ 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) of this section.

(2) The department may waive the civil penalty for a minor violation of this part, a rule or order adopted under this part, or a term or condition of a permit if the department determines ~~such that the~~ violation is not of potential harm to public health, public safety, or the environment and does not impair the

1 administration of this part. The board shall adopt rules to implement and administer a procedure for waiver
2 of a penalty under this subsection.

3 (3) The department shall notify the person or operator of the violation. ~~The person or operator shall~~
4 ~~by~~ By filing a written request within 20 days of receipt of the notice of violation, the person or operator
5 ~~is be~~ entitled to a hearing on the issues of whether the alleged violation has occurred and whether the
6 penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no
7 more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has
8 expired, the department shall make findings of fact and shall issue a written decision as to the occurrence
9 of the violation and the amount of penalty warranted and shall order the payment of a penalty in that
10 amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the
11 person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit
12 with the penalty a statement that the penalty is being paid under protest and the department shall hold the
13 payment in escrow until judicial review is complete. Any person or operator who fails to request and submit
14 testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under
15 protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the
16 violation or penalty determinations. These penalties are recoverable in any action brought in the name of
17 the state of Montana by the attorney general in the district court of the first judicial district of this state,
18 in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

19 (4) The attorney general shall, upon request of the ~~commissioner~~ director of environmental quality,
20 sue for the recovery of the penalties provided for in this section and bring an action for a restraining order
21 or temporary or permanent injunction against an operator or other person who:

- 22 (a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued
23 under this part;
- 24 (b) interferes with, hinders, or delays the department in carrying out the provisions of this part;
- 25 (c) refuses to admit an authorized representative of the department to the permit area;
- 26 (d) refuses to permit inspection of the permit area by an authorized representative of the
27 department;
- 28 (e) refuses to furnish any information or report requested by the department in furtherance of the
29 provisions of this part;
- 30 (f) refuses to permit access to and copying of ~~such~~ the records ~~as~~ that the department determines to

1 be necessary in carrying out the provisions of this part.

2 (5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion
3 or final termination of all proceedings for review of ~~such~~ relief granted under this part unless, prior ~~thereto~~
4 to the final determination, the district court granting the relief sets it aside or modifies it.

5 (6) A person who violates any of the provisions of this part or any determination or order adopted
6 under this part or who willfully violates any permit condition issued under this part is guilty of a
7 misdemeanor and shall be fined not less than \$500 and not more than \$10,000 or imprisoned for not more
8 than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

9 (7) Any person who knowingly makes any false statement, representation, or certification or
10 knowingly fails to make any statement, representation, or certification in any application, record, report,
11 plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be
12 punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

13 (8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes
14 with the department or its agents in the performance of duties pursuant to this part shall be punished by
15 a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

16 (9) ~~No~~ An employee of the department performing any function or duty under this part ~~shall~~ may
17 not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. ~~Whoever~~
18 A person who knowingly violates the provisions of this subsection shall upon conviction be punished by
19 a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both."
20

21 **Section 295.** Section 82-4-337, MCA, is amended to read:

22 **"82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision.**

23 (1) (a) The department shall review all applications for operating permits for completeness within 60 days
24 of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The
25 initial completeness notice must note all deficiency issues, and the department may not in a later
26 completeness notice raise an issue pertaining to the initial application that was not raised in the initial
27 notice. The department may, however, raise any deficiency during the adequacy review pursuant to
28 subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible.
29 An application is considered complete unless the applicant is notified of any deficiencies within the
30 appropriate review period.

(b) Unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341~~(6)~~(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall

1 provide the department with a list of at least 50% of the contractors from the department's list. The
2 department shall select its contractor from the list provided by the applicant.

3 (v) Failure of the department to act upon a complete application within the extension period
4 constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond
5 as required in 82-4-338.

6 (2) The operating permit must be granted for the period required to complete the operation and is
7 valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended
8 or revoked by the department as provided in this part.

9 (3) The operating permit must provide that the reclamation plan may be modified by the
10 department, upon proper application of the permittee or after timely notice and opportunity for hearing, at
11 any time during the term of the permit and for any of the following reasons:

12 (a) to modify the requirements so that they will not conflict with existing laws;

13 (b) when the previously adopted reclamation plan is impossible or impracticable to implement and
14 maintain;

15 (c) when significant environmental problem situations are revealed by field inspection.

16 (4) During the term of an operating permit, an operator may apply for an amendment or revision
17 to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

18 (5) Applications for major amendments must be processed in the same manner as applications for
19 new permits.

20 (6) Major amendments are those that may significantly affect the environment. Minor amendments
21 are those that will not significantly affect the environment. The board may by rule establish criteria for
22 classification of amendments as major or minor. The rules must establish requirements for the content of
23 applications for amendments and revisions and procedures for processing of minor amendments.

24 (7) If the department demonstrates that a revision may result in a significant environmental impact
25 that was not previously and substantially evaluated in an environmental impact statement, the application
26 must be processed in the same manner as is provided for new permits. Applications for minor amendments
27 and other revisions must be processed within 30 days of receipt of an application."

28
29 **Section 296.** Section 82-4-360, MCA, is amended to read:

30 **"82-4-360. Activity prohibited if bond forfeited -- exception.** (1) Except as provided in subsection

1 (2), a person may not conduct mining or exploration activities in this state if that person or any firm or
2 business association of which that person was a principal or controlling member had a bond forfeited under
3 this part.

4 (2) A person described in subsection (1) may apply for an operations permit or an exploration
5 license or may conclude a written agreement under 82-4-305 if that person first pays to the department:

6 (a) the full amount of the necessary expenses incurred by the department under 82-4-341~~(5)~~(6)
7 for reclamation of the area for which the bond was forfeited;

8 (b) the full amount of any penalties assessed under this part; and

9 (c) interest on these amounts and penalties incurred at the rate of 6% per year."

10
11 **Section 297.** Section 85-1-604, MCA, is amended to read:

12 **"85-1-604. Renewable resource grant and loan program state special revenue account created --**
13 **revenue allocated -- limitations on appropriations from account.** (1) There is created a renewable resource
14 grant and loan program state special revenue account within the state special revenue fund established in
15 17-2-102.

16 (2) Except to the extent that they are required to be credited to the renewable resource loan debt
17 service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program
18 state special revenue account:

19 (a) all revenue of the works and other money as provided in 85-1-332;

20 (b) the interest income of the resource indemnity trust fund as provided in and subject to the
21 conditions of 15-38-202;

22 (c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource
23 loan debt service fund above debt service requirements as provided in and subject to the conditions of
24 85-1-619;

25 (d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of
26 loans, including arrangements for obtaining security interests; and

27 (e) the resource indemnity and ground water assessment tax proceeds as provided in
28 15-38-106(2)(b).

29 (3) Appropriations may be made from the renewable resource grant and loan program state special
30 revenue account for the following purposes and subject to the following conditions:

1 (a) The amount of resource indemnity trust fund interest earnings allocated under
2 15-38-202(2)(b)(iii) must be used for renewable resource grants.

3 (b) An amount less than or equal to that paid into the account under 85-1-332 and only that
4 amount may be appropriated for the operation and maintenance of state-owned projects and works. If the
5 amount of money available for appropriation under this subsection ~~(b)~~ (3)(b) is greater than that necessary
6 for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).

7 (c) An amount less than or equal to that paid into the account from the resource indemnity trust
8 account plus any excess from subsection (3)(b) and only that amount may be appropriated from the
9 account for expenditures that meet the policies and objectives of the renewable resource grant and loan
10 program. If the amount of money available for appropriation under this subsection ~~(c)~~ (3)(c) is greater than
11 that necessary for operation and maintenance expenses, the excess may be appropriated as provided in
12 subsection (3)(d).

13 (d) An amount less than or equal to that paid into the account from the sources provided for in
14 subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be
15 appropriated from the account for loans and grants for renewable resource projects; for purchase of liens
16 and operation of property as provided in 85-1-615; for administrative expenses, including but not limited
17 to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including
18 arrangements for obtaining security interests; and for other necessities incurred in administering the loans
19 and grants."

20
21 **Section 298.** Section 85-2-701, MCA, is amended to read:

22 **"85-2-701. Legislative intent.** (1) Because the water and water rights within each water division
23 are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication
24 of existing water rights under the Montana Water Use Act. ~~Therefore, it~~ It is the intent of the legislature
25 that the ~~attorney general's petition required in 85-2-211~~ unified proceedings include all claimants of
26 reserved Indian water rights as necessary and indispensable parties under authority granted the state by
27 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of
28 this part in an effort to conclude compacts for the equitable division and apportionment of waters between
29 the state and its people and the several Indian tribes claiming reserved water rights within the state.

30 (2) To the maximum extent possible, the reserved water rights compact commission established

under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by 85-2-218 its highest priority. In negotiations, the commission is acting on behalf of the governor."

Section 299. Section 85-2-905, MCA, is amended to read:

"85-2-905. Ground water assessment account. (1) There is a ground water assessment account within the ~~state~~ special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) at the beginning of each fiscal year, 14.1% of the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, and 2.2% of the proceeds from the metalliferous mines license taxes, as authorized by 15-37-117, unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:

(i) equals or exceeds \$666,000, in which case no allocation ~~will~~ may be made and the funds must be deposited in the resource indemnity trust fund established by 15-38-201; or

(ii) is less than \$666,000, in which case an amount equal to the difference between the unobligated cash balance and \$666,000 must be allocated to the ground water assessment account and any remaining amount must be deposited in the resource indemnity trust fund established by 15-38-201;

(b) funds provided by federal or state government agencies and by local governments to carry out the purposes of this part; and

(c) funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part."

Section 300. Section 85-3-211, MCA, is amended to read:

"85-3-211. Proof of financial responsibility by applicant. Proof of financial responsibility may be

furnished by an applicant by ~~his~~ showing, to the satisfaction of the ~~board~~ department, the applicant's ability to respond in damages for liability ~~which~~ that might reasonably be attached to or result from ~~his~~ the applicant's weather modification and control activities."

Section 301. Section 85-5-407, MCA, is amended to read:

"85-5-407. Appointment of water commissioner after final decree. When the rights of the respective parties in ~~said an~~ action to the use of the waters flowing in ~~said a~~ ditch ~~shall be~~ are adjudicated, the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 10% of the waters of ~~said the~~ ditch, may, in the exercise of ~~his~~ the judge's discretion, appoint a water commissioner to divide, apportion, and distribute the waters of ~~said the~~ ditch to the respective parties according to their respective rights as set forth in ~~such the~~ decree. When a commissioner is appointed under the provisions of ~~85-5-101 through 85-5-301~~ this chapter to apportion and distribute the waters of the stream from which the water flowing in ~~said a~~ ditch is taken, ~~such the~~ commissioner shall, when ~~so~~ directed by the judge or court, apportion and distribute the waters of ~~said the~~ ditch according to the decree by which the rights of the respective owners were adjudicated."

Section 302. Section 85-5-408, MCA, is amended to read:

"85-5-408. Apportionment of costs. (1) When a commissioner is appointed upon the application of an owner or owners of ~~such a~~ ditch, the court may fix the compensation of ~~such the~~ commissioner and the term of ~~his the commissioner's~~ employment. The court shall make an order apportioning the amount of ~~such~~ compensation among the several owner or owners, tenants in common, or stockholders of ~~said the~~ ditch according to their respective rights and interest, ~~which. The order shall have~~ has the ~~force and~~ effect of a judgment against the person to whom the water was admeasured and for whose benefit it was used. When, in the discretion of the court, ~~such an~~ order of apportionment of expense is made against the land for which ~~such the~~ water was used, it ~~shall have~~ has the ~~force and~~ effect of a lien against ~~said the~~ land to which ~~such the~~ apportionment was made. Execution may issue upon ~~such the~~ order as upon a judgment by direction of the court, upon the application of any person interested ~~therein in the order.~~

(2) When a commissioner is appointed under the provisions of ~~85-5-101 through 85-5-301~~ this chapter to distribute the waters of the stream from which the waters flowing in ~~said a~~ ditch are taken and to apportion and distribute the waters of ~~said the~~ ditch according to the rights of the respective owners

1 ~~thereof of the waters~~, the judge, in ~~his~~ the judge's discretion, may, in addition to the apportionment taxed
2 against the respective owners of the waters of ~~said~~ the stream, apportion and tax the amount, if any, that
3 the owners of ~~such~~ the ditch shall pay in addition to the amount taxed under the provisions of ~~85-6-101~~
4 ~~through 85-6-301~~ this chapter."

5
6 **Section 303.** Section 85-6-109, MCA, is amended to read:

7 **"85-6-109. Operation of projects with water users' association -- definitions.** (1) As used in this
8 section, the following definitions apply: ~~"department" means the department of natural resources and~~
9 ~~conservation provided for in Title 2, chapter 15, part 33, and~~

10 (a) ~~"association"~~ "Association" means a water users' association.

11 (b) "Department" means the department of natural resources and conservation provided for in Title
12 2, chapter 15, part 33.

13 (2) Whenever the department proposes a program of maintenance, repair, operation, or alteration
14 of a project in excess of \$25,000, the cost of which will be borne by an association pursuant to the terms
15 of a water marketing contract, the association must be informed of the program and given an opportunity
16 to comment. The department shall notify the association of its decision. If the association believes the
17 program to be unnecessary or excessive in cost, it may appeal the department decision to the district court
18 in any county where all or part of the project works is located or to the district court in Lewis and Clark
19 County.

20 (3) If ~~a complaint~~ an appeal is filed under subsection (2), the court shall hold a trial de novo on the
21 question of necessity of the department program and the question of excessive costs. If the association
22 prevails, the court may award costs to the association. The court may specify an acceptable program of
23 maintenance, repair, operation, or alteration or may order the department and the association to develop
24 a program, subject to court approval.

25 (4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the
26 department shall assist the association in attempting to secure sources of financing, including federal funds.

27 (5) Whenever the department proposes to abandon, sell, or otherwise dispose of a project that
28 involves a water users' association, the department shall notify the association. Before the department may
29 take further action to abandon, sell, or otherwise dispose of a project that involves a water users'
30 association, the department must receive a petition approving the abandonment, sale, or disposition. The

petition must be signed by stockholders of the association who represent 66 2/3% or more of the issued and outstanding stock of the association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal, stockholders of the association who represent 30% or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned, sold, or otherwise disposed of without the consent of the legislature."

Section 304. Section 85-7-1910, MCA, is amended to read:

"85-7-1910. Board power to dispose of district property. (1) The board of commissioners may, with the written consent of a majority in number and acreage of the owners of the lands in the district or, if the leased property substantially benefits a subdistrict in the district, of a majority in number and acreage of the owners of lands within the subdistrict, ~~to~~ lease in whole or in part the system of canals and works or water belonging to the district, whenever the leasing is considered for the benefit of the district or subdistrict, if the leased property substantially benefits the subdistrict. When the board contemplates the leasing of the canals or works or water of a district or subdistrict, it shall declare the availability of the lease by resolution or order and give notice ~~thereof~~ by publication in ~~some~~ a newspaper published in the county in which the office of that irrigation district is situated at least 2 calendar weeks prior to the making of any lease. A lease may not be made unless a majority in number and acreage of the holders of title or evidence of title to the lands in the district or, if the lease substantially benefits a subdistrict, a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict, file with the board a written consent to make the lease. The lease may not interfere with any rights that have been established by law at the time the lease is made, nor may the lease operate to deprive any owner or owners of land in the district of the use of water from ~~such~~ the works upon the lands. The board of commissioners shall require a ~~good and~~ sufficient bond to secure the faithful performance of the lease by the lessee.

(2) In addition to all other powers granted to any irrigation district existing under the laws of Montana, for the purpose of securing financial aid in any form from the department of natural resources and conservation, an irrigation district may convey, assign, transfer, and set over to the department all or any part of its property, including all water rights, rights-of-way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and headgates, ~~as~~ that may be required by the department as a condition to furnishing financial aid or assistance.

(3) If an irrigation district has ceased operation, the district prior to its dissolution may convey,

1 assign, transfer, and set over to any person or association of persons all or any part of its property
2 described in subsection (2), for the purpose of irrigating and reclaiming any or all other land ~~which~~ that can
3 be served and irrigated."

4
5 **Section 305.** Section 85-7-2159, MCA, is amended to read:

6 **"85-7-2159. Issuance of tax deed.** When there has been no redemption of the lands ~~so~~ sold at
7 tax sale to an irrigation district or any other person or of the lands struck off to the county for which
8 certificate of sale has been assigned to an irrigation district or any other person in the manner and within
9 the time allowed ~~by 85-7-2163~~ for the redemption of lands from ~~such~~ tax sales, the county treasurer of
10 the county within which ~~such~~ the lands are situated shall issue a tax deed ~~therefor~~ for the lands to ~~such~~
11 the irrigation district or other holder of certificate of sale."

12
13 **Section 306.** Section 87-2-803, MCA, is amended to read:

14 **"87-2-803. Disabled persons.** (1) Disabled persons are entitled to fish and to hunt game birds with
15 only a conservation license if they are residents of Montana not residing in an institution and are certified
16 as disabled as prescribed by departmental rule.

17 (2) A resident of Montana who is certified as disabled by the department and who is not residing
18 in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident
19 who is 15 years of age or older and who is under 62 years of age.

20 (3) A resident or nonresident disabled person who is certified as disabled by the department and
21 who is not residing in an institution may carry a permit on a form prescribed by the department. A disabled
22 person issued a permit under this subsection is entitled to have the department stamp the permit with
23 "Permission to Hunt From a Vehicle" if the person establishes to the satisfaction of the department that the
24 person is permanently physically handicapped and nonambulatory or that the person's mobility is
25 substantially impaired.

26 (4) A disabled person carrying a permit as required in subsection (3), upon which is stamped
27 "Permission to Hunt From a Vehicle", may hunt by shooting a firearm from the shoulder, berm, or barrow
28 pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may
29 hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm,
30 or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked

1 in an area, not a public highway, where hunting is permitted. ~~Nothing in this~~ This subsection allows does
2 not allow a disabled person to shoot across the roadway of any public highway or to hunt on private
3 property without permission of the landowner. A disabled person who hunts as authorized in this
4 subsection must have a companion to assist in immediately dressing any killed game animal. The companion
5 may also assist the disabled hunter by hunting a game animal that has been wounded by the disabled
6 hunter when the disabled hunter is unable to pursue and kill the wounded game animal. Any vehicle from
7 which a disabled person is hunting must be conspicuously marked with an orange-colored international
8 symbol of the handicapped on the front, rear, and each side of the vehicle.

9 (5) A resident of Montana who is certified by the department as ~~a blind individual~~ suffering from
10 blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of
11 a one-time fee of \$10. The license is valid for the lifetime of the blind individual and allows the licensee to
12 fish as authorized by department rule. An applicant for a license under this subsection need not obtain a
13 wildlife conservation license as a prerequisite to licensure."
14

15 **Section 307.** Section 87-5-112, MCA, is amended to read:

16 **"87-5-112. Construction.** ~~None of the provisions of this~~ This part shall may not be construed to
17 apply retroactively or to prohibit importation into the state of wildlife ~~which may be~~ that are lawfully
18 imported into the United States or lawfully taken or removed from another state or to prohibit entry into
19 the state or possession, transportation, exportation, processing, sale or offer for sale, or shipment of any
20 wildlife whose species or subspecies is ~~deemed~~ determined to be threatened with statewide extinction in
21 this state but not in the state where originally taken, if the person engaging therein demonstrates by
22 substantial evidence that ~~such the~~ wildlife was lawfully taken or removed from ~~such the~~ state; ~~provided~~
23 ~~that.~~ However, this subsection shall section may not be construed to permit the possession, transportation,
24 exportation, processing, sale or offer for sale, or shipment within this state of wildlife on the United States'
25 list of endangered native fish and wildlife, as amended and accepted in accordance with 87-5-107(5),
26 except as permitted in the provision by 87-5-107(3) and (4) and 87-5-109(1)."
27

28 **Section 308.** Section 90-2-1104, MCA, is amended to read:

29 **"90-2-1104. Reclamation and development grants account.** (1) There is a reclamation and
30 development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;

(b) the resource indemnity ~~trust~~ and ground water assessment tax under the provisions of 15-38-106; and

(c) the metal mines license tax proceeds as provided in 15-37-117(1)(e).

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded prior to funding of projects."

Section 309. Section 90-2-1121, MCA, is amended to read:

"90-2-1121. Prohibited compensation to public officers or employees -- penalty. (1) ~~No member,~~ An officer, attorney, or other employee of ~~the board or~~ the department may not directly or indirectly be the beneficiary of or receive any fee, commission, gift, or other consideration in connection with any transaction or business under the reclamation and development grants program other than the salary, fee, or other compensation ~~that he may receive~~ received as ~~a member,~~ an officer, attorney, or employee.

(2) A person convicted of violating any provision of this section shall be punished by a fine not to exceed \$2,000 plus the value of any consideration illegally received or by imprisonment for a term not to exceed 2 years, or both. Any fines collected under this section must be deposited in the reclamation and development grants account."

Section 310. Section 90-4-1002, MCA, is amended to read:

"90-4-1002. Definitions. As used in 90-4-1003 ~~and 90-4-1004~~, the following definitions apply:

(1) "Council" means the environmental quality council established in 5-16-101.

(2) "Department" means the department of environmental quality established in 2-15-3501."

Section 311. Section 90-6-127, MCA, is amended to read:

"90-6-127. Allocation of state limit. (1) All of the aggregate amount of qualified mortgage bonds

1 that may be issued during any calendar year in accordance with section ~~103A(g)~~ 146 of the Internal
2 Revenue Code of 1954 (26 U.S.C. 146), as amended, is allocated to the board of housing.

3 (2) The board of housing may adopt standards for determining and may designate areas of chronic
4 economic distress within the meaning of section ~~103A(g)~~ 143(j)(3) of the Internal Revenue Code of 1954
5 (26 U.S.C. 143(j)(3)), as amended."

6
7 **Section 312.** Section 90-6-210, MCA, is amended to read:

8 **"90-6-210. Coal area highway reconstruction program.** (1) The department of transportation,
9 within the area designated as the eastern Montana coal field economic growth center as certified to the
10 secretary of transportation by the governor under 23 U.S.C. 143, shall prepare a special construction
11 program for the reconstruction of deficient sections of these highways in consultation with the governing
12 bodies of the counties in the area.

13 (2) The department of transportation shall expedite the planning and reconstruction program for
14 projects on the designated portions within this area by using funds allocated under this ~~subsection~~ section
15 and any federal funds that may be made available to match ~~such~~ those funds. Until federal funds are made
16 available to match the funds allocated under this ~~subsection~~ section, the department of transportation may,
17 upon approval of the Montana state transportation commission, expend ~~such~~ funds for planning and
18 reconstruction projects with or without assurance from the federal government that unmatched state
19 expenditures will be retroactively recognized for matching purposes.

20 (3) Funds allocated under this ~~subsection~~ section may not be used to match apportionments
21 made for primary and secondary highways under the Federal-Aid Highway Acts; however, ~~nothing in this~~
22 ~~subsection should~~ section may not be construed to prohibit the implementation of projects otherwise funded
23 by apportionments made under the Federal-Aid Highway Acts; ~~furthermore, In addition,~~ planning and
24 reconstruction projects may be financed in whole or in part by public and private funds provided ~~such that~~
25 the projects conform to the applicable standards, regulations, and procedures of the department of
26 transportation and the federal highway administration."

27
28 **Section 313.** Section 90-8-301, MCA, is amended to read:

29 **"90-8-301. Qualified investments -- penalty -- extension permissible.** (1) A qualified Montana
30 capital company receiving investments for which a taxpayer has applied and received a tax credit must use

1 its capital base to make qualified investments according to the following schedule:

2 (a) at least 30% of its capital base raised through investments for which tax credits were taken
3 within 3 years of the date on which the certified company was designated as a qualified capital company
4 by the department and, in the case of capital raised by a qualified Montana capital company under an
5 amended application for additional tax credits filed after its initial designation as a qualified Montana capital
6 company, at least 30% of its capital base raised through investments for which tax credits were taken
7 within 3 years of the date on which the department approves the amended application;

8 (b) at least 50% of its capital base raised through investments for which tax credits were taken
9 within 4 years of the date on which the certified company was designated as a qualified capital company
10 by the department and, in the case of capital raised by a qualified Montana capital company under an
11 amended application for additional tax credits filed after its initial designation as a qualified Montana capital
12 company, at least 50% of its capital base raised through investments for which tax credits were taken
13 within 4 years of the date on which the department approves the amended application; and

14 (c) at least 70% of its capital base raised through investments for which tax credits were taken
15 within 5 years of the date on which the certified company was designated as a qualified capital company
16 by the department and, in the case of capital raised by a qualified Montana capital company under an
17 amended application for additional tax credits filed after its initial designation as a qualified Montana capital
18 company, at least 70% of its capital base raised through investments for which tax credits were taken
19 within 5 years of the date on which the department approves the amended application.

20 (2) The qualified Montana small business investment capital company receiving investments for
21 which a taxpayer has applied and received a tax credit must use its capital base to make qualified
22 investments according to the following schedule:

23 (a) of its capital base raised through investments for which tax credits were taken:

24 (i) 30% within 3 years of the date on which the certified company was designated as the qualified
25 Montana small business investment capital company by the department or within 3 years of its designation
26 as a small business investment corporation by the small business administration, whichever is later;

27 (ii) 50% within 4 years of the date on which the certified company was designated as the qualified
28 Montana small business investment capital company by the department or within 4 years after its
29 designation as a small business investment corporation by the small business administration, whichever is
30 later; and

1 (iii) 70% within 5 years of the date on which the certified company was designated as the qualified
2 Montana small business investment capital company by the department or within 5 years after its
3 designation as a small business investment corporation by the small business administration, whichever is
4 later; or

5 (b) of its capital base, in the case of capital raised through a loan from the small business
6 administration pursuant to 13 CFR 107, as provided under this chapter except as provided in subsection
7 (2)(a).

8 (3) Following each annual examination, the department shall notify the department of revenue of
9 any companies that are not in compliance with this section.

10 (4) A qualified Montana capital company that fails to make qualified investments pursuant to
11 subsection (1) or the qualified Montana small business investment capital company that fails to make
12 qualified investments pursuant to subsection (2) shall pay to the department of revenue a penalty equal to
13 all of the tax credits allowed to the investors investing in that company during that time period, with
14 interest at 1% a month from the date the tax credits were certified as allocated to the qualified Montana
15 capital company or to the qualified Montana small business investment capital company. The department
16 of revenue may abate the penalty if the capital company or the Montana small business investment capital
17 company establishes reasonable cause for the failure to make qualified investments pursuant to subsection
18 (1) or (2) and if the failure was not due to neglect on the part of the company.

19 (5) The department of revenue may grant an extension of time in which to make qualified
20 investments pursuant to subsection (1) or (2) upon application by a capital company or the Montana small
21 business investment capital company showing reasonable cause for an extension.

22 (6) The department of revenue shall deposit any amount received under this ~~subsection~~ section to
23 the credit of the state general fund.

24 (7) A capital company may invest tax credit funds in an existing profitable business only if a
25 substantial portion of the investment is to be used for expansion of the business. The department may limit
26 the amount of the investment to be counted toward the investment percentage criteria set forth in this
27 section to the amount to be used for the expansion of the business."

28
29 **NEW SECTION. Section 314. Code commissioner instructions.** (1) The code commissioner
30 is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other

sections of the Montana Code Annotated contained in material enacted by the 55th legislature.

(2) The code commissioner shall renumber 2-15-231 as an integral part of Title 2, chapter 15, part 22, and shall change all affected references accordingly.

(3) The code commissioner shall renumber 53-2-804 as an integral part of Title 53, chapter 3, part 1, and shall change all affected references accordingly.

NEW SECTION. **Section 315. Repealer.** (1) Sections 2-18-314, 2-89-201, 2-89-202, 2-89-205, 2-89-206, 2-89-208, 2-89-209, 3-5-516, 13-13-279, 15-6-212, 15-16-802, 15-16-803, 16-2-401, 16-2-402, 16-2-403, 16-2-404, 16-2-405, 16-2-406, 16-2-408, 20-7-505, 39-7-601, 39-7-602, 39-7-603, 39-7-604, 39-7-605, 39-7-606, 61-1-122, 61-4-309, 70-1-311, 77-1-221, and 85-2-211, MCA, are repealed.

(2) Section 16-2-407, MCA, is repealed.

NEW SECTION. **Section 316. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 315(2)] is effective July 1, 1999.

-END-

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE CRIPPEN, on January 9, 1997, at
10:00 A.M., in the Senate Judiciary Room

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 32 - January 6
SB 33 - January 6
SB 36 - January 6
Executive Action: None

HEARING ON SB 32

Sponsor: SENATOR MIKE HALLIGAN, SD 34, Missoula

Proponents: --P. Mars Scott, State Bar of Montana, Domestic
Relations Study Commission
--Mary "Marty" Phippen, Montana Association of
Clerks of District Court

Opponents: None

in a case involving AFDC the court would be required to separate out the temporary family support order from the temporary child support order.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1,; Side: a; Approx. Time Count: 32.7; Comments: .}

SENATOR ESTRADA asked SENATOR HALLIGAN if he had any problems with the Division's amendments?

SENATOR HALLIGAN replied that he had no problems with the amendments but since this was a temporary order and not a final order he felt the Division would not be enforcing the temporary order. The amendment would not hurt the bill.

CHAIRMAN CRIPPEN asked Ms. Wellbank why she was concerned with the temporary order since the Division was only involved at the end of the proceedings?

Ms. Wellbank stated the CSED also has the authority and the obligation to establish a child support order when none exists. In this situation, no child support order would exist. It is also conceivable that there may be a temporary family support order wherein one party would not be receiving the money because of lack of enforcement.

Closing by Sponsor: SENATOR HALLIGAN closed on SB 33.

HEARING ON SB 36

Sponsor: SENATOR J.D. LYNCH, SD 19

Proponents: --Greg Petesch, Code Commissioner
--Jacqueline Lenmark, American Insurance Association

Opponents: None

Opening Statement by Sponsor: SENATOR J.D. LYNCH, SD 19, presented SB 36. This bill is called the Code Commissioner Bill. This bill contains revisions made to statutes which are non-controversial and non-substantive in terms of debate. A date has been removed which may have some substance to the bill itself. This will need to be addressed.

Proponents' Testimony: Greg Petesch, Code Commissioner, stated that during this interim they made a concerted effort to completely search the code for all references. They also searched all references to federal law and either updated the reference to reflect the current codification of the federal law

or, where appropriate, inserted references to the United States Code so that practitioners would be able to more easily find the federal law being referenced. There were changes which needed to be made due to reorganization. There were references to former agencies which were inserted in legislation last session which were not corrected. They updated references to the Uniform Enforcement of Family Support Act. That was a culmination of three uniform state laws. Several definition sections were amended to remove definitions which were never used. They extended some references in part. They updated references to archaic terms in the code.

{Tape: 1; Side: b; Approx. Time Count: 0.00.}

Section 178, page 174, included a provision which allowed the Commissioner of Labor to designate an assigned risk pool for Workers' Compensation insurance. They intended to remove archaic references to date. Inadvertently, they may have extended the authority of the Commissioner to do this. As written, the Commissioner had to act no later than the date which is stricken. By removing the date, they may have made it discretionary with the commissioner to do that even now. That was not their intent. This bill had to be submitted to the Legislative Council by November 1. It was then sent to all agencies in July. It was sent to the Labor Department and they approved it. The best thing to do at this point would be to remove that provision from the bill by striking it. The other non-substantive way to handle the problem would be to repeal this section so it could be stricken from the bill and added to the repealer section.

{Tape: 1; Side: b; Approx. Time Count: 2.7; Comments: .}

Jacqueline Lenmark, American Insurance Association, remarked she was the person who brought this concern to Mr. Petesch. She urged the committee to repeal Section 178 because the time in which the Commissioner of Labor could act has passed. The Commissioner of Labor at the time did make a decision under the provisions of that statute to not create an assigned risk pool under that authority. If that is not done, she asked that the section be stricken from the bill.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SENATOR ESTRADA asked if there was anything in the bill which pertained to judges.

Mr. Petesch commented the only section which dealt with the court system would be Section 16, page 18. This transfers the warrant writing function from the State Auditor to the State Treasurer to reflect a bill passed last session.

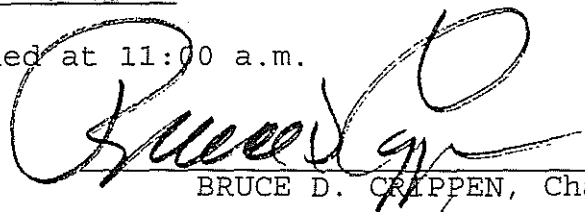
CHAIRMAN CRIPPEN suggested that instead of appointing a subcommittee to look at the bill, a synopsis of the bill be provided for SENATOR LYNCH to present the bill at the floor session. Valencia Lane and Mr. Petesch agreed to provide the same and review with SENATOR LYNCH. He also asked for their recommendation on Section 178, whether it should be stricken or repealed. He asked Mr. Petesch if repealing the section would handle the problem or whether they would be faced with the same problem two years from now.

Mr. Petesch wanted some time to review it so that the repeal would not affect provisions other than subsection (1).

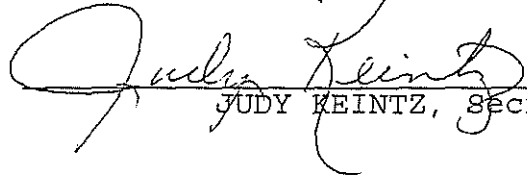
Closing by Sponsor: SENATOR LYNCH closed on SB 36.

ADJOURNMENT

Adjournment: Meeting adjourned at 11:00 a.m.



BRUCE D. CRIPPEN, Chairman



JUDY KEINTZ, Secretary

BDC/jjk

Jan 9, 1997

DATE _____

[illegible]

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DATE 1-9-97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY:

SB 320 33
SB 36

< ■ >

PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Nary "Narty" Phippen	Montana Association of Clerks of District Court	32		
P. MARS SCOTT	STATE BAR-MONTANA	33		
M. Wellbank	DOMESTIC RELATIONS COMMISSION	33	Neutral	
Ging Petersen	CSED/DPHHS	36		
Maqueline Denmark	Code Commission	36		
Kate Cholewa	MT. Womans Lobby	32 33	✓	Sec. 178

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on January 14, 1997, at 10:00 A.M., in Senate Judiciary Room.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 103, 01/06/97
SB 106, 01/06/97
Executive Action: SB 36, DO PASS AS AMENDED
SB 2, DO PASS AS AMENDED.

HEARING ON SB 103

Sponsor: SENATOR FRED VAN VALKENBURG, SD 32, Missoula

Proponents: --Gene Prendergast, Adjutant General, State of Montana
--Mike McCabe, Staff Attorney for Organized Militia of the State of Montana
--Roger Hagen, Enlisted Officers Association, National Guard of Montana
--Bill Gianoulis, Chief Defense Council for the State of Montana

SEN. GROSFIELD asked if there is variation in how accurate they are by brand.

Mr. Lively stated the instrumentation must fall within a five percent accuracy for acceptance.

SEN. GROSFIELD stated that there is a certain range where they are not entirely accurate.

Mr. Lively commented there is nothing which is zero percent accurate. A five percent accuracy is in excess of medical standards for diagnostic instrumentation. As far as a test of .10, could that be a .105? Yes. Could that be a .095? Yes. Is that a significant alcohol concentration? Absolutely, it is. They do not look at just the fact that they got a number. It is the totality of all tools available.

Closing by Sponsor:

{Tape: 2; Side: a; Approx. Time Count: 8.8; Comments: .}

SEN. VAN VALKENBURG stated the fiscal note was prepared with some worse case scenario assumptions. The bill has a negative impact on the General Fund of \$219,000 in the first year of the biennium and \$86,000 in the second year. This assumes that the Forensic Science Division is operating at full capacity and needs additional equipment and personnel to perform these tests. The Department is probably willing to take this bill without funding for the coming biennium because of its desire to deal with the significant issues in the bill. The total fiscal impact deals with the language in the bill which is being stricken on page 3, lines 9 and 10. While it is true that the State of Montana has a prohibition about driving motor vehicles with a blood alcohol concentration in excess of .10 what they are primarily talking about is driving under the influence of alcohol prosecutions, not per se prosecutions. In that regard, the issue of .10 is only an evidentiary issue which gives rise to an inference that a person is under the influence of alcohol. It is still possible to prosecute someone who has a blood alcohol concentration less than .10 and it also means that if they are in excess of .10 they are not necessarily guilty of driving under the influence of alcohol. This bill becomes necessary because they have found out through court decision and application of the laws that our statutes can be improved and fine tuned.

EXECUTIVE ACTION ON SB 36

{Tape: 2; Side: b; Approx. Time Count: 12.9; Comments: .}

Amendments: sb003601.agp (EXHIBIT 6) - Amendments 1 and 2

Discussion:

CHAIRMAN CRIPPEN stated there was an amendment which dealt with section 178, page 174, line 18.

Valencia Lane commented that Jackie Lenmark pointed out the problem of striking a date which was thought to be non-substantive, it really was a substantive change. The question was how to amend the section in the bill to put back the date and eliminate the problem. Greg Petesch prepared the amendment which was also discussed with Ms. Lenmark. The amendment, on page 174, line 20, inserts "no later than December 31, 1990" and on line 21 it strikes "establish" and inserts "order the establishment of" which would return it to existing language.

Motion/Vote: SEN. HALLIGAN MOVED TO AMEND SB 36. The motion carried unanimously.

Motion/Vote: SEN. HALLIGAN MOVED SB 36 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SB2

{Tape: 2; Side: b; Approx. Time Count: 17.2; Comments: .}

Amendments: sb00201.avl (EXHIBIT 7) - Amendments 1, 6, and 7.

Discussion:

SEN. RIC HOLDEN explained the first amendment came from the construction industry. Repair and maintenance was changed to the removal of litter and graffiti from roads, etc. Amendment 1, 6, and 7 all deal with limiting the bill to the removal of litter and graffiti.

Motion/Vote: SEN. HOLDEN MOVED TO AMEND SB 2 WITH AMENDMENTS 1, 6, AND 7. The motion carried unanimously.

Amendments: sb00201.avl (EXHIBIT 7) Amendments 2, 3, 4 and 5.

Discussion:

Ms. Lane stated that at the hearing, Lois Adams handed out a technical amendment. Ms. Lane suggested two technical amendments which Ms. Adams agreed to and those appear as no. 2 which puts a reference into the title to a section which was being amended. Amendment 4 deals with a error when the bill was drafted. This bill takes prison industries out of Title 53, Chapter 1 and left this in Title 53, Chapter 30. The amendment requested by Ms. Adams appears as amendment 5 which inserts a subsection (f) into this section. It was necessary because the bill amended 53-1-301 and stripped everything relating to prison industries which was applicable and put it into Title 53, Chapter 30. Subsection (f) was overlooked.

Motion: SEN. HOLDEN MOVED TO FURTHER AMEND SB 2 WITH AMENDMENTS 2, 3, 4 AND 5.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 1/14/97
FILE NO. 36

Amendments to Senate Bill No. 36
First Reading Copy

Requested by Senator Lynch
For the Committee on Judiciary

Prepared by Greg Petesch
January 9, 1997

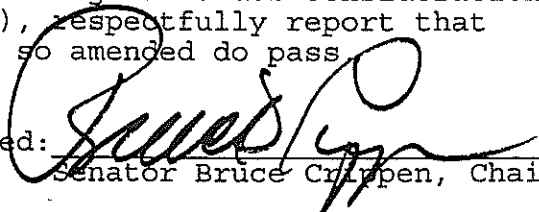
1. Page 174, line 20.
Strike: "The"
Insert: "No later than December 31, 1990, the"
2. Page 174, line 21.
Strike: "establish"
Insert: "order the establishment of"

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 14, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 36 (first reading copy -- white), respectfully report that SB 36 be amended as follows and as so amended do pass.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 174, line 20.

Strike: "The"

Insert: "No later than December 31, 1990, the"

2. Page 174, line 21.

Strike: "establish"

Insert: "order the establishment of"

-END-

 Amd. Coord.
Sec. of Senate

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1/14/97

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 4, 1997, at
7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Boharski excused until 8:00 AM.

Members Absent: Reps. Smith and Molnar absent until 8:00 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:	SB 36, HB 222	POSTED 1/22/97
	HB 321, HB 339	POSTED 1/28/97
Executive Action:	SB 36	BE CONCURRED IN
	HB 268	DO PASS
	HB 321	DO PASS
	HB 44	DO PASS AS AMENDED
	HB 68	DO PASS AS AMENDED
	HB 339	DO PASS AS AMENDED
	HB 273	TABLE

Discussion:

{Tape: 1; Side: A; Approx. Time Count: 40.4 - Tape 1; Side B; 4.2}

Motion: REP. CURTISS moved to segregate amendment #4 for vote.

{Tape: 1; Side: B; Approx. Time Count: 4.3; Comments: REP. CURTISS withdrew the motion.}

Motion: REP. ANDERSON moved substitute amendments.

EXHIBIT 4

{Tape: 1; Side: B; Approx. Time Count: 5.5}

Discussion:

{Tape: 1; Side: B; Approx. Time Count: 7.7 - 16.1; Comments: Further executive action was suspended until the conclusion of hearings.}

HEARING ON SB 36

Opening Statement by Sponsor: SEN. J.D. LYNCH

{Tape: 1; Side: B; Approx. Time Count: 17.1}

Questions From Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Count: 19.5; Comments: There were no proponents, opponents or informational witnesses. Mr. Greg Petesch from the Code Commission answered committee questions in the absence of SEN. LYNCH.}

Closing by Sponsor:

{Comments: SEN. LYNCH had been excused to attend another committee hearing and did not close.}

HEARING ON HB 222

Opening Statement by Sponsor: REP. SHIELL ANDERSON

{Tape: 1; Side: B; Approx. Time Count: 29.0}

Proponents' Testimony:

JOE MAZUREK, Attorney General

{Tape: 1; Side: B; Approx. Time Count: 32.6; Comments: Urged the committee to table HB 127.}

CHRIS TWEETEN, Attorney General's Office

EXHIBIT 5

{Tape: 1; Side: B; Approx. Time Count: 39.0-Tape 2; Side A; 18.9}

JOHN HARRISON, Former Supreme Court Justice

Opponents' Testimony:

BILL HOOKS, Montana Defender Appellate Office

{Tape: 2; Side: A; Approx. Time Count: 21.0}

JEFFREY RENZ, Assistant Professor

EXHIBIT 6

{Tape: 2; Side: A; Approx. Time Count: 39.8-Tape 2; Side B; 11.5}

PATRICIA SAINDON, Department of Transportation
{Tape: 3; Side: B; Approx. Time Count: 18.0}

MIKE RUPERT, Boyd Andrew and DUI Task Force
{Tape: 3; Side: B; Approx. Time Count: 21.7}

LOU ANN HIMEL
{Tape: 3; Side: B; Approx. Time Count: 22.4}

MIKE COLLINS, DUI Task Force
{Tape: 3; Side: B; Approx. Time Count: 26.5}

KATHY COLLINS, DUI Task Force
{Tape: 3; Side: B; Approx. Time Count: 27.4}

KATHY MC GOWAN, Montana Addiction Services Provider
{Tape: 3; Side: B; Approx. Time Count: 29.5}

BRENDA NORDLAND, Department of Justice

EXHIBIT 15

Questions From Committee Members and Responses:
{Tape: 3; Side: B; Approx. Time Count: 31.3 - 41.0.}

Closing by Sponsor: REP. CAREY
{Tape: 3; Side: B; Approx. Time Count: 41.4}

EXECUTIVE ACTION ON HB 44

{Tape: 4; Side: A; Approx. Time Count: 0.1; Comments: Executive Action on HB 44 was resumed.}

Motion: REP. ANDERSON moved the Department of Corrections Amendments

Discussion:
{Tape: 4; Side: A; Approx. Time Count: 0.2 - 16.2}

Vote: The motion carried by unanimous voice vote.

Motion/Vote: REP. BILL BOHARSKI moved HB 44 DO PASS AS AMENDED. The motion carried 16 - 0. REP. ANDERSON voted aye by proxy.

EXECUTIVE ACTION ON SB 36

Motion/Vote: REP. HURDLE moved SB 36 BE CONCURRED IN. The motion carried 15 - 0.

{Tape: 4; Side: A; Approx. Time Count: 17.0}

EXECUTIVE ACTION ON HB 321

Motion: REP. HURDLE moved HB 321 DO PASS.

Discussion:
{Tape: 4; Side: A; Approx. Time Count: 18.4}



HOUSE STANDING COMMITTEE REPORT

February 5, 1997

Page 1 of 1

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 36** (third reading copy -- blue) be concurred in.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Grimes

Committee Vote:
Yes 15, No 0.

2/5
mp

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HOUSE OF REPRESENTATIVES

7 AM

JUDICIARY COMMITTEE

ROLL CALL

DATE 2/7/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN 7:10	✓		
REP. WILLIAM BOHARSKI 8:05	✓		✓
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON 7:15	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON 7:10	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR 8:05	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 8:00	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2/4/97

BILL NO. SB 36 SPONSOR(S) Sen. Lynch

PLEASE PRINT

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
<u>Greg Petersen</u>	<u>Code Commission</u>		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14

which *that* provide for the payment, where *when* required, of the student support fee by the reciprocal state;

(3) waive resident tuition for students at least 62 years of age;

(4) waive tuition and fees for:

(a) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(b) persons designated by the department of corrections pursuant to 52-5-112;

(c) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(d) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States; or

(e) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(f) *the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;*

(5) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(a) a paid or volunteer member of a municipal or rural fire department;

(b) a law enforcement officer as defined in 7-32-201; or

(c) a full-time highway patrol officer."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 12, 1997

CHAPTER NO. 42

[SB 36]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CLARIFY ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 55TH LEGISLATURE; AMENDING SECTIONS 1-11-101, 2-1-212,

2-2-121, 2-2-136, 2-4-313, 2-4-622, 2-7-517, 2-8-113, 2-15-2204, 2-18-203, 2-18-301, 2-18-303, 2-18-304, 2-18-704, 2-18-1202, 3-2-405, 5-2-504, 5-4-307, 5-4-308, 5-5-214, 5-5-217, 5-11-203, 5-11-210, 5-11-212, 5-11-213, 5-17-205, 5-18-107, 5-22-101, 7-1-114, 7-2-2218, 7-2-2219, 7-4-2106, 7-4-2206, 7-6-2531, 7-7-4602, 7-13-4311, 7-14-4736, 7-16-2105, 7-16-4222, 7-32-2244, 7-34-2201, 10-2-416, 10-3-207, 10-3-501, 10-3-504, 10-4-101, 10-4-301, 13-13-276, 13-13-278, 13-25-106, 13-27-202, 13-37-106, 13-37-128, 13-37-130, 15-1-521, 15-1-704, 15-7-303, 15-8-104, 15-16-102, 15-16-119, 15-23-101, 15-23-703, 15-23-706, 15-23-707, 15-30-101, 15-30-111, 15-30-117, 15-30-121, 15-30-162, 15-30-201, 15-30-202, 15-31-102, 15-31-131, 15-32-102, 15-32-201, 15-32-403, 15-36-324, 15-36-325, 15-38-104, 15-38-106, 15-38-201, 15-38-202, 15-70-125, 15-70-235, 15-70-236, 16-1-106, 16-1-201, 16-1-202, 16-2-101, 16-2-103, 16-3-220, 16-6-106, 17-2-107, 17-3-221, 17-5-202, 17-6-103, 17-6-212, 17-7-502, 17-8-101, 18-1-103, 19-1-104, 19-1-402, 19-1-503, 19-3-1104, 19-3-1205, 19-9-411, 19-9-1101, 19-20-302, 19-50-102, 20-1-301, 20-7-504, 20-9-115, 20-9-341, 20-9-347, 20-9-466, 20-15-326, 20-15-404, 20-25-501, 22-1-412, 22-3-429, 22-3-603, 23-2-523, 23-2-536, 23-2-622, 23-2-717, 23-2-736, 23-5-406, 23-7-103, 23-7-211, 23-7-301, 25-10-206, 27-1-307, 27-1-718, 30-4-213, 30-10-103, 30-10-110, 32-1-310, 32-1-453, 32-1-1005, 32-3-803, 32-6-102, 33-2-523, 33-2-830, 33-4-511, 33-10-202, 33-16-1026, 33-16-1035, 33-17-603, 33-19-104, 33-22-703, 33-22-1108, 33-22-1521, 33-31-311, 35-1-933, 35-1-934, 35-1-1107, 37-25-305, 37-29-302, 37-29-305, 39-3-406, 39-8-207, 39-29-101, 39-51-307, 39-51-401, 39-51-402, 39-51-403, 39-51-404, 39-51-407, 39-51-501, 39-51-503, 39-51-1110, 39-51-1304, 39-51-2106, 39-51-2110, 39-51-2508, 39-51-2602, 39-51-3106, 39-71-431, 39-71-501, 39-71-517, 39-71-519, 39-71-703, 40-5-161, 40-5-164, 40-5-201, 40-5-701, 40-5-821, 41-1-402, 41-3-204, 41-4-102, 41-5-103, 41-5-1008, 45-2-311, 45-5-624, 45-8-317, 45-9-208, 45-10-108, 46-6-211, 46-14-101, 46-18-130, 46-18-801, 46-20-701, 46-24-212, 46-30-401, 50-4-504, 50-4-605, 50-5-101, 50-5-228, 50-5-1104, 50-31-103, 50-31-202, 50-31-203, 50-31-301, 50-31-306, 50-31-307, 50-31-311, 50-31-312, 50-53-201, 50-53-202, 50-53-203, 50-53-204, 50-53-206, 50-53-207, 50-53-211, 50-53-212, 50-53-216, 50-53-217, 50-53-218, 50-60-101, 52-2-523, 52-5-101, 52-5-108, 52-5-109, 52-5-112, 52-5-113, 53-1-104, 53-1-202, 53-6-110, 53-6-708, 53-7-101, 53-7-301, 53-19-102, 60-2-208, 60-11-121, 61-2-108, 61-3-446, 61-3-463, 61-3-502, 61-4-310, 61-5-121, 61-5-126, 61-8-356, 61-8-407, 61-8-422, 61-8-722, 61-12-201, 69-1-224, 69-12-314, 69-12-406, 72-16-331, 72-16-479, 72-17-213, 75-1-1101, 75-2-101, 75-3-103, 75-5-621, 75-5-1113, 75-6-205, 75-6-211, 75-10-707, 75-10-806, 75-11-313, 75-20-304, 76-2-202, 76-2-222, 76-2-302, 76-3-305, 76-3-511, 76-6-105, 76-14-113, 76-15-541, 76-15-543, 76-15-546, 77-1-804, 77-2-402, 77-2-403, 77-3-444, 77-6-202, 80-7-123, 80-8-111, 81-22-101, 82-4-232, 82-4-253, 82-4-254, 82-4-337, 82-4-360, 85-1-604, 85-2-701, 85-2-905, 85-3-211, 85-5-407, 85-5-408, 85-6-109, 85-7-1910, 85-7-2159, 87-2-803, 87-5-112, 90-2-1104, 90-2-1121, 90-4-1002, 90-6-127, 90-6-210, AND 90-8-301, MCA; REPEALING SECTIONS 2-18-314, 2-89-201, 2-89-202, 2-89-205, 2-89-206, 2-89-208, 2-89-209, 3-5-516, 13-13-279, 15-6-212, 15-16-802, 15-16-803, 16-2-401, 16-2-402, 16-2-403, 16-2-404, 16-2-405, 16-2-406, 16-2-407, 16-2-408, 20-7-505, 39-7-601, 39-7-602, 39-7-603, 39-7-604, 39-7-605, 39-7-606, 61-1-122, 61-4-309, 70-1-311, 77-1-221, AND 85-2-211, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-101, MCA, is amended to read: